

TRANSCRIPT OF PROCEEDINGS

SUPREME COURT OF THE UNITED STATES

WINTER TERM 1901-1902

No. 211

THE NATIONAL BANK OF COMMERCE OF NEW YORK

APPELLANT

v.

THE NATIONAL TRUST COMPANY OF NEW YORK

APPEE

FOR PETITION FOR WRIT OF HABEAS CORPUS

FILED JULY 24, 1902

1902

1902

(21,265.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 203.

THE NATIONAL BANK OF COMMERCE OF SEATTLE,  
APPELLANT,

vs.

R. E. DOWNIE, TRUSTEE; ST. PAUL & TACOMA LUMBER  
COMPANY, BARBER ASPHALT PAVING COMPANY,  
MUKILTEO LUMBER COMPANY, GAMWELL &  
WHEELER, BANKRUPTS, AND THE SEATTLE NA-  
TIONAL BANK.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT.

INDEX.

	Original.	Print.
Caption . . . . .	1	1
Transcript from the district court of the United States for the west- ern district of Washington . . . . .	1	1
Caption . . . . .	2	1
Petition of Seattle Hardware Co. <i>et al.</i> . . . . .	3	2
Answer of Gamwell & Wheeler . . . . .	7	4
Order referring matter to referee . . . . .	9	4
Adjudication of bankruptcy . . . . .	10	5
Order appointing receiver . . . . .	11	6
Decree of June 20, 1907 . . . . .	13	6
Proof of debt due National Bank of Commerce of Seattle . . . . .	18	8
Exhibit "A"—Promissory note for \$17,500, dated Seattle, Washington, February 4, 1907, signed by Gamwell & Wheeler . . . . .	25	12



	Original.	Print.
Exhibit "B"—Promissory note for \$11,000, dated Seattle, Washington, February 7, 1907, signed by Gamwell & Wheeler.....	26	12
"C"—Promissory note for \$10,000, dated Seattle, Washington, February 13, 1907, signed by Gamwell & Wheeler.....	27	13
"D"—Claim against the United States Government for supplies furnished to the Isthmian Canal Commission by Gamwell & Wheeler, assigned to National Bank of Commerce of Seattle.....	28	13
"E"—Claim against the United States Government for supplies furnished to the navy yard at Mare Island by Gamwell & Wheeler, assigned to the National Bank of Commerce.	31	15
"F"—Claim against the United States Government for supplies furnished to the navy yard at Bremerton by Gamwell & Wheeler, assigned to the National Bank of Commerce.	32	15
"G"—Claim against the United States Government for supplies furnished to the navy yard at Mare Island by Gamwell & Wheeler, assigned to the National Bank of Commerce.	33	16
"H"—Claim against the United States Government for supplies furnished to the navy yard at Mare Island by Gamwell & Wheeler, assigned to the National Bank of Commerce.	34	16
"I"—Claim against the United States Government for supplies furnished to the navy yard at Bremerton by Gamwell & Wheeler, assigned to the National Bank of Commerce.	35	17
"J"—Claim against the United States Government for supplies furnished to the naval training station at San Francisco by Gamwell & Wheeler, assigned to the National Bank of Commerce.....	36	18
"K"—Claim against the United States Government for supplies furnished to the navy yard at Mare Island by Gamwell & Wheeler, assigned to the National Bank of Commerce.	37	18
"L"—Claim against the United States Government for supplies furnished to the navy yard at Mare Island by Gamwell & Wheeler, assigned to the National Bank of Commerce.	38	19
"M"—Claim against the United States Government for supplies furnished to the navy yard at Mare Island by Gamwell & Wheeler, assigned to the National Bank of Commerce.	39	20
"N"—Claim against the United States Government for supplies furnished to the navy yard at Mare Island by Gamwell & Wheeler, assigned to the National Bank of Commerce.	40	21

# INDEX.

III

	Original.	Print.
Exhibit "O"—Claim against the United States Government for supplies furnished to the navy yard at Mare Island by Gamwell & Wheeler, assigned to the National Bank of Commerce.	42	22
"P"—Claim against the United States Government for supplies furnished to the navy yard at Mare Island by Gamwell & Wheeler, assigned to the National Bank of Commerce.	44	23
"Q"—Claim against the United States Government for supplies furnished to the quartermaster's department, U. S. A., San Francisco, California, by Gamwell & Wheeler, assigned to Seattle National Bank.....	45	24
"R"—Claim against the United States Government for supplies furnished to the navy yard at Mare Island by Gamwell & Wheeler, assigned to the National Bank of Commerce.	47	26
"S"—Claim against the United States Government for supplies furnished to the navy yard at Bremerton by Gamwell & Wheeler, assigned to the National Bank of Commerce.	50	28
Objections of Barber Asphalt Paving Company to allowance of preferences and securities claimed by Seattle National Bank and National Bank of Commerce.....	54	30
Objections of Mukilteo Lumber Co. to allowance of preferences and securities claimed by Seattle National Bank and National Bank of Commerce.....	56	31
Objections of St. Paul & Tacoma Lumber Co. to allowance of preferences and securities claimed by Seattle National Bank and National Bank of Commerce.....	58	32
Objections of R. E. Downie to allowance of preferences and securities claimed by Seattle National Bank and National Bank of Commerce.....	60	33
Stipulation of facts.....	62	34
Order or decree of referee in bankruptcy, July 22, 1907.....	65	35
Order of referee in bankruptcy amending order of July 22, 1907.	68	37
Petition of Barber Asphalt Paving Co. <i>et al.</i> to referee in bankruptcy for review.....	70	37
Certificate and return of referee in bankruptcy on petition for review.....	73	39
Memorandum decision of district court as to validity of assignments of claims against the United States.....	75	40
Order of district court allowing claims of Seattle National Bank and National Bank of Commerce, &c.....	78	41
Petition for appeal.....	80	42
Allowance of appeal.....	81	43
Assignment of errors.....	82	43
Bond on appeal.....	84	44
Citation (copy).....	88	46
Præcipe for record.....	90	47
Clerk's certificate to transcript.....	92	48
Citation (original).....	94	48
Clerk's certificate to printed record.....	97	50

	Original.	Print.
Caption .....	98	51
Order for submission. ....	100	52
Opinion .....	101	52
Decree.....	112	57
Order filing findings of fact and conclusions of law <i>nunc pro tunc</i> ...	113	58
Findings of fact.....	114	58
Conclusions of law.....	118	61
Petition for appeal .....	120	61
Allowance of appeal.....	121	62
Assignment of errors .....	122	62
Bond on appeal .....	125	63
Certificate of Mr. Justice Brewer.. ..	129	65
Clerk's certificate.....	132	66
Citation .....	134	67
Acceptance of service of citation.....	135	68

1 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1527.

THE NATIONAL BANK OF COMMERCE OF SEATTLE a Creditor,  
Appellant,  
vs.

R. E. DOWNIE, Trustee, ST. PAUL & TACOMA LUMBER COMPANY,  
Barber Asphalt Paving Company, Mukilteo Lumber Company,  
Gamwell & Wheeler, Bankrupts, and The Seattle National Bank,  
Appellees.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER,  
Copartners as Gamwell & Wheeler, Bankrupts.

*Transcript of Record.*

[Printed.]

Upon Appeal from the United States District Court for the Western  
District of Washington, Northern Division.

Filed Jan. 23, 1908.

FRANK D. MONCKTON, *Clerk.*

2 In the District Court of the United States for the Western  
District of Washington, Northern Division.

In Bankruptcy. No. 3453.

In re ARTHUR GAMWELL and PHILIP WHEELER, Copartners as  
Gamwell & Wheeler, Bankrupts.

*Names and Addresses of Counsel.*

Cooley & Horan, Everett, Washington, and Peters & Powell, Dexter Horton Building, Seattle, Washington, Attorneys for St. Paul & Tacoma Lumber Company, Barber Asphalt Paving Company, and Mukilteo Company.

Bausman & Kelleher, Alaska Building, Seattle, Washington, Attorneys for the Seattle National Bank.

Kerr & McCord, Attorneys for R. E. Downie, Trustee, and for Gamwell & Wheeler, Bankrupts, Mutual Life Building, Seattle, Washington.

G. E. de Steiguer, New York Building, Seattle, Washington, Attorney for National Bank of Commerce of Seattle.

- 3 In the United States District Court, Western District of Washington, Northern Division.

In Bankruptcy. No. 3453.

In the Matter of the Estate of ARTHUR GAMWELL and PHILIP WHEELER, Copartners Doing Business as Gamwell & Wheeler, Bankrupts.

*Petition of Seattle Hardware Co., Barber Asphalt Paving Co., and Standard Furniture Co.*

To the Honorable C. H. Hanford, Judge of the District Court of the United States, for the Western District of Washington, Northern Division:

The petition of the Seattle Hardware Company a corporation, the Barber Asphalt Paving Company, a corporation, and the Standard Furniture Company, a corporation, said corporations being domiciled in the city of Seattle, State of Washington, respectfully shows:

That during all the times hereinafter stated the petitioners, Seattle Hardware Company and Standard Furniture Company were each a corporation duly organized under the laws of the State of Wash-

- 4 ington; and the Barber Asphalt Paving Company was a corporation duly organized under the laws of the State of West Virginia, having places of business and general offices within the city of Seattle, State of Washington.

That Arthur Gamwell and Philip Wheeler of Seattle, Washington, have for the greater portion of six months next preceding the date of filing this petition had their principal place of business and have resided in the city of Seattle, county of King, and State aforesaid, and they owe debts to the amount of ten thousand (10,000) dollars, and over.

That your petitioners are creditors of said Gamwell & Wheeler, having provable claims amounting in the aggregate in excess of securities held by them to the sum of \$2,466.70; that the nature and amount of your petitioners' claims are as follows:

For goods, wares and merchandise sold and delivered by Barber Asphalt Paving Company to said Gamwell & Wheeler in the sum of \$2,362.50, no part of which said sum has been paid.

For goods, wares and merchandise sold and delivered by the petitioner Standard Furniture Company to said Gamwell & Wheeler in the sum of \$101.10, no part of which has been paid;

For goods, wares and merchandise sold and delivered by the petitioner Seattle Hardware Company to said Gamwell & Wheeler in the sum of \$3.10, no part of which has been paid.

- 5 And your petitioners further represent that the said Gamwell & Wheeler were insolvent, and within four months next preceding the date of this petition, they, the said Gamwell & Wheeler, have committed an act of bankruptcy in that they did on, to wit, the 14th day of April, 1907, admit in writing their inability to pay

their debts, and their willingness to be adjudged bankrupts on that ground.

Wherefore, your petitioners pray that service of this petition, with a subpoena, may be made on the said Gamwell & Wheeler as provided in the acts of Congress relating to bankruptcy, and that they may be adjudged by the Court to be bankrupts within the purview of said acts.

SEATTLE HARDWARE COMPANY,  
By BAUSMAN & KELLEHER, *Its —.*

STANDARD FURNITURE COMPANY,  
By BAUSMAN & KELLEHER, *Its —.*

BARBER ASPHALT PAVING  
COMPANY,  
By PETERS & POWELL, *Its —.*

COOLEY & HORAN,  
BAUSMAN & KELLEHER,  
PETERS & POWELL,  
*Attorneys for Petitioners.*

6 UNITED STATES OF AMERICA,  
*Western District of Washington Northern Division, ss:*

Daniel Kelleher, one of the attorneys for the Seattle Hardware Company and Standard Furniture Company, and W. A. Peters, one of the attorneys for the Barber Asphalt Paving Company, the petitioners hereinabove named, each being first duly sworn, doth make solemn oath that the statements contained in the foregoing petition subscribed by them, said petitioners, are true; that they are the attorneys and agents of the respective petitioners, and the source of their information as to the truth of said statements is from information furnished them by their respective clients, and by the admission of Arthur Gamwell, one of the copartners of Gamwell & Wheeler.

W. A. PETERS.  
DAN'L KELLEHER.

Subscribed and sworn to before me this 16th day of April, A. D. 1907.

[SEAL.]

MARION EDWARDS,  
*Notary Public in and for the State of  
Washington, Residing at Seattle.*

[Endorsed:] Petition of Seattle Hardware Company, Ainsworth & Dunn, and Barber Asphalt Paving Company. Filed in the U. S. District Court, Western Dist. of Washington, 12:10 P. M. Apr. 16, 1907. R. M. Hopkins, Clerk.

In the United States District Court for the Western District of Washington, Northern Division.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER, Copartners Doing Business under the Firm Name and Style of Gamwell & Wheeler, Bankrupts.

*Answer of Arthur Gamwell and Philip Wheeler to Petition.*

Come now Arthur Gamwell and Philip Wheeler, copartners doing business under the firm name and style of Gamwell & Wheeler, the bankrupts above named, and answering the petition of the petitioning creditor for cause of answer says:

1.

They admit that the firm of Gamwell & Wheeler is insolvent and unable to meet its obligations and consent to adjudication in bankruptcy.

KERR & McCORD.

*Attorneys for Bankrupts.*

8 STATE OF WASHINGTON,  
*County of King, ss:*

Arthur Gamwell, being first duly sworn, deposes and says: That he is a member of the firm of Gamwell & Wheeler, the above-mentioned bankrupts; that he has read the foregoing answer, knows the contents thereof and believes the same to be true

ARTHUR GAMWELL.

Subscribed and sworn to before me this 16th day of April, 1907.

[SEAL.]

E. S. McCORD.

*Notary Public in and for the State of  
Washington, Residing at Seattle.*

[Endorsed:] Answer. Filed in the U. S. District Court, Western Dist. of Washington. Apr. 16, 1907, 12:10 P. M. R. M. Hopkins, Clerk.

In the United States District Court, Western District of Washington, Northern Division.

In Bankruptcy. No. 3453.

In the Matter of the Estate of ARTHUR GAMWELL and PHILIP WHEELER, Copartners Doing Business as Gamwell & Wheeler, Bankrupts.

9 *Order Referring Matter to Referee in Bankruptcy, etc.*

Whereas, on the 16th day of April, A. D. 1907, a petition was filed to have Gamwell & Wheeler, of Seattle, King County, District

aforesaid, adjudged bankrupts according to the provisions of the acts of Congress relating to bankrupts; and

Whereas said bankrupts have filed an answer herein admitting the petition of said petitioners; and,

Whereas, the Judge of said court was absent from this division of said district at the time of filing said petition and answer—

It is thereupon ordered that the said matter be referred to the Honorable J. P. Hoyt, one of the referees in bankruptcy, in this court, to consider said petition and take such proceedings therein as are required by said acts, and that the said Gamwell & Wheeler shall attend before said referee on the 23d day of April, 1907, at the office of said referee.

Witness my hand and the seal of said court at Seattle in said district on the 16th day of April, A. D. 1907.

[SEAL.]

R. M. HOPKINS, *Clerk*.

10 [Endorsed:] Order of Reference. Filed in the U. S. District Court, Western District of Washington, 12:10 P. M. Apr. 16, 1907. R. M. Hopkins, Clerk.

In the United States District Court, Western District of Washington,  
Northern Division.

In Bankruptcy. No. 3453.

In the Matter of the Estate of ARTHUR GAMWELL and PHILIP WHEELER, Copartners Doing Business as Gamwell & Wheeler, Bankrupts.

### *Adjudication of Bankruptcy.*

At Seattle, in said District, on the 16th day of April, A. D. 1907, before the Honorable C. H. Hanford, Judge of said court in bankruptcy, the petition of the Seattle Hardware Company, a corporation, Standard Furniture Company, a corporation, and the Barber Asphalt Paving Company, a corporation, that Arthur Gamwell and Philip Wheeler, copartners doing business as Gamwell & Wheeler, be adjudged bankrupts within the true intent and meaning of the acts of Congress relating to bankruptcy, and the said Gamwell & Wheeler, having filed herein their verified answer, admitting the allegations

of said petition, and the said matter having been heard and  
11 duly considered, the said Arthur Gamwell and Philip Wheeler, copartners doing business as Gamwell & Wheeler, are hereby declared and adjudged bankrupts accordingly.

Witness the Honorable C. H. Hanford, Judge of said Court, and the seal thereof, at Seattle, in said district, on the 16th day of April, A. D. 1907.

JOHN P. HOYT, *Referee*.

[Endorsed:] Adjudication of Bankruptcy. Filed April 16th, 1907, 1 P. M. John P. Hoyt, Referee.



In the United States District Court, Western District of Washington,  
Northern Division.

In Bankruptcy. No. 3453.

In the Matter of the Estate of ARTHUR GAMWELL and PHILIP  
WHEELER, Copartners Doing Business as Gamwell & Wheeler,  
Bankrupts.

*Order Appointing Receiver.*

This matter coming on to be heard upon the application of the  
Seattle Hardware Company, a corporation, Standard Furniture Com-  
pany, a corporation, and the Barber Asphalt Paving Com-  
12 pany, a corporation, petitioners, for the appointment of a  
receiver of the goods, effects and business of the bankrupts  
Gamwell & Wheeler, both partnership and individual, the said Gam-  
well & Wheeler appearing herein and consenting, and it appearing  
to the Court that the appointment of such receiver is absolutely nec-  
essary to preserve the property and protect and care for the business  
of said bankrupts pending the appointment and qualification of a  
trustee herein,

Now it is ordered, that Ralph E. Downie, of the city of Seattle  
be and he is hereby appointed such receiver upon filing a bond herein  
in the sum of one thousand dollars, conditioned according to law.

Done in open court this 16th day of April, A. D. 1907.

JOHN P. HOYT, Referee.

[Endorsed:] Order Appointing Receiver. Filed April 16th,  
1907, 1:20 P. M. John P. Hoyt, Referee.

13 In the United States District Court for the Western District  
of Washington, Northern Division.

No. 3453.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER, Copart-  
ners Doing Business Under the Firm Name of Gamwell & Wheeler,  
Bankrupts.

*Order or Decree of District Court.*

This cause coming on to be heard this the 20th day of June, A. D.  
1907, Kerr & McCord appearing for R. E. Downie, as temporary  
receiver of the estate of Gamwell & Wheeler, and as temporary re-  
ceiver of the estate of Arthur Gamwell, bankrupts above named, and  
as permanent trustee of the estate of Gamwell & Wheeler and of  
Arthur Gamwell, bankrupts, and it appearing to the Court that on the  
16th day of April, A. D. 1907, the said R. E. Downie was duly ap-  
pointed temporary receiver of the estate of Gamwell & Wheeler and of  
Arthur Gamwell, by the Honorable John P. Hoyt, Referee in Bank-

ruptcy in the above District, and duly qualified as such temporary receiver and entered upon his duties as such receiver; and it further appearing that on the 4th day of June, A. D. 1907, the said

14 R. E. Downie was duly and regularly elected and appointed as permanent trustee in bankruptcy for the estate of Gamwell & Wheeler and for the estate of Arthur Gamwell, by the Honorable John P. Hoyt, Referee in Bankruptcy as aforesaid, and that he has duly qualified and entered upon his duties as such permanent trustee in bankruptcy; and it further appearing that on the 21st day of May, 1907, the said R. E. Downie as Receiver of Gamwell & Wheeler was directed by the said Hon. John P. Hoyt, referee in Bankruptcy, to execute to the Quartermaster's Department of the United States Army at Seattle, Washington, all receipt- and vouchers requisite and necessary in order to secure payment to him as such receiver of \$5140.56 from the Quartermaster's Department of the United States Army; and it further appearing that the said R. E. Downie is the proper person, as permanent Trustee in Bankruptcy of the estate of Gamwell & Wheeler and of the estate of Arthur Gamwell, to collect all moneys now due or hereafter to become due from the United States Government and the various departments of said Government to the said Gamwell & Wheeler and to the said Arthur Gamwell, and that he is the proper person to execute receipts and vouchers therefor and that he is the proper person to receive from the officers of the United States Government any and all sums now due or hereafter to become due from the Government

15 of the United States to the said Gamwell & Wheeler and the said Arthur Gamwell.

Wherefore, by reason of the law and the premises it is by the Court ordered, adjudged and decreed;

First. That the order entered in the above-entitled cause by the Honorable John P. Hoyt, Referee in Bankruptcy for the above-named District and Court on the 16th day of April, A. D. 1907, by the terms of which order the said R. E. Downie was appointed temporary receiver of the estate of Gamwell & Wheeler, bankrupts, and of the estate of Arthur Gamwell, Bankrupt, be and the same is hereby confirmed and approved and the execution by the said R. E. Downie as temporary receiver of any and all receipts and vouchers to the Government of the United States and to any of the departments thereof is further confirmed, ratified and approved.

Second. It is further ordered, adjudged and decreed that the order entered in the above-entitled cause on the 4th day of June A. D. 1907, by the Honorable John P. Hoyt, Referee in Bankruptcy, for said District appointing the said R. E. Downie as permanent receiver of the estate of Gamwell & Wheeler, and of the estate of Arthur Gamwell, bankrupts, be and the same is hereby ratified and approved.

Third. It is further ordered, adjudged and decreed that R. E. Downie as Trustee of the estate of Gamwell & Wheeler, bankrupts and as trustee of the estate of Arthur Gamwell, bankrupt, be and he is hereby authorized, empowered and directed to collect from the United States Government, and from the various

16

departments thereof, all sums of money now due or owing, or hereafter to become due and owing from the United States Government or from any of the departments thereof, to the said Gamwell & Wheeler or to the said Arthur Gamwell and he is authorized and directed to execute to the said United States Government or the various departments thereof, or to the officers of the United States Government any and all receipts and vouchers required by the said Government, and the action of the said R. T. Downie, as such Trustee, in the execution of all receipts and vouchers for money paid him by said Government, or its officers, shall have the same force and effect, as though payment had been made and receipts and vouchers executed by the said Gamwell & Wheeler or by the said Arthur Gamwell, respectively, prior to the date of their adjudication in bankruptcy by this Court on the 16th day of April, A. D. 1907; and it is further ordered that payment made by the Government of the United States or any of its officers through any of its departments or otherwise, shall constitute a full and complete payment of all sums so paid on account of the said Gamwell & Wheeler or of the said Arthur Gamwell, and the Government of the United States, by such payment, shall be relieved and discharged and freed from any further liability on account of the sums so paid.

Fourth. It is further particularly ordered that the execution by the said R. E. Downie, as temporary Receiver, of a receipt and voucher for the sum of \$5,140.56 to the Quartermaster's Department of the United States Army for supplies furnished by Gamwell & Wheeler to the said Quartermaster's Department at Seattle, Washington, be and the same is hereby approved.

C. H. HANFORD, *Judge*.

[Endorsed:] Order. Filed in the U. S. District Court, Western Dist. of Washington, Jun- 20, 1907, 2 P. M. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

In Bankruptcy. No. 3453.

In the Matter of the Estate of ARTHUR GAMWELL and PHILIP WHEELER, Copartners Doing Business as Gamwell & Wheeler, Bankrupts.

18 *Proof of Debt Due National Bank of Commerce of Seattle.*

At Seattle, Washington, in the County of King, in said Western District of Washington, on the 4th day of Jun- A. D. 1907, came J. W. Maxwell, of Seattle, in the county of King and State of Washington, and made oath and says that he is Cashier of The National Bank of Commerce of Seattle, a corporation incorporated by and under the national banking laws of the United States, and carrying on its banking business at Seattle, in the county of King, and State of

Washington, and that he is duly authorized to make this proof and says that the said Arthur Gamwell and Philip Wheeler, partners as Gamwell and Wheeler, the persons against whom a petition for adjudication of bankruptcy has been filed, were at and before the filing of the said petition and still are justly and truly indebted to said corporation in the sum of thirty-seven thousand one hundred forty-nine 85/100 dollars; that the consideration of said debt is as follows:

Seventeen thousand five hundred dollars loaned to said Gamwell and Wheeler on the fourth day of February, 1907, for which said Gamwell and Wheeler, at the time of said loan, made and delivered to said corporation their promissory note of which a copy is hereto attached marked Exhibit "A."

19 The further sum of eleven thousand dollars loaned to said Gamwell and Wheeler on the seventh day of February, 1907, for which the said Gamwell and Wheeler, at the time of said loan, made and delivered to said corporation their promissory note, of which a copy is hereto attached marked Exhibit "B;" and

The further sum of ten thousand dollars loaned by said corporation to said Gamwell and Wheeler on or about the thirteenth day of February, 1907, for which said Gamwell and Wheeler made and delivered to said corporation, at the time of obtaining said loan, their promissory note of which a copy is hereto attached marked Exhibit "C."

That no part of said debt has been paid, and there are no setoffs or counterclaims to the same or any thereof; that there have been no payments upon said loans or notes whatsoever except payments upon said note marked Exhibit "B," to wit: Three hundred forty-nine 75/100 dollars on March 14, 1907, one thousand three hundred fifty-three 91/100 dollars on March 27, 1907, one hundred thirteen 59/100 dollars on April 12, 1907, which payments have been allowed and deducted in the foregoing statement of the total amount of said debt.

That the only securities held by said corporation for said debt are the following:

A claim against the United States Government on account of supplies furnished to the Isthmian Canal Commission, in the construction of the Panama Canal, for the amount, as claimed by Gamwell and Wheeler, of nineteen thousand five hundred and thirty-two 47/100 dollars, which was assigned to said corporation by said Gamwell and Wheeler to secure said indebtedness, a copy of the statement of which said claim of said assignment are hereto attached and marked Exhibit "D."

A claim against the United States Government on account of supplies furnished to the Navy Yard at Mare Island, for the amount, as claimed by Gamwell and Wheeler, of two thousand and thirty-six 70/100 dollars, which was assigned to said corporation by said Gamwell and Wheeler to secure said indebtedness, a copy of the statement of which said claim and of said assignment are hereto attached and marked Exhibit "E."

A claim against the United States Government on account of supplies furnished to the Navy Yard at Bremerton, for the amount,

as claimed by Gamwell and Wheeler, of eight hundred and nine 75/100 dollars, which was assigned to said corporation by said Gamwell and Wheeler to secure said indebtedness, a copy of the statement of which said claim and of said assignment are hereto attached and marked Exhibit "F."

21 A claim against the United States Government on account of supplies furnished to the Navy Yard at Mare Island, for the amount, as claimed by Gamwell and Wheeler, of two hundred and forty-eight 55/100 dollars, which was assigned to said corporation by said Gamwell and Wheeler to secure said indebtedness, a copy of the statement of which said claim and of said assignment are hereto attached and marked Exhibit "G."

A claim against the United States Government on account of supplies furnished to the Navy Yard at Mare Island, for the amount, as claimed by Gamwell and Wheeler, of two hundred and forty-two 76/100 dollars which was assigned to said corporation by said Gamwell and Wheeler to secure said indebtedness, a copy of the assignment of which said claim and of said assignment are hereto attached and marked Exhibit "H."

A claim against the United States Government on account of supplies furnished to the Navy Yard at Bremerton, for the amount, as claimed by Gamwell and Wheeler, of six hundred and twenty 69/100 dollars, which was assigned to said corporation by said Gamwell and Wheeler to secure said indebtedness, a copy of the statement of which said claim and of said assignment are hereto attached and marked Exhibit "I."

22 A claim against the United States Government on account of supplies furnished to the Naval Training Station at San Francisco, California, for the amount, as claimed by Gamwell and Wheeler, of two hundred and sixty-eight 81/100 dollars, which was assigned to said corporation by said Gamwell and Wheeler to secure said indebtedness, a copy of the statement of which said claim and of said assignment are hereto attached and marked Exhibit "J."

A claim against the United States Government on account of supplies furnished to the Navy Yard at Mare Island, for the amount, as claimed by Gamwell and Wheeler, of four hundred and eighty 70/100 dollars, which was assigned to said corporation by said Gamwell and Wheeler to secure said indebtedness, a copy of the statement of which said claim and of said assignment are hereto attached and marked Exhibit "K."

A claim against the United States Government on account of supplies furnished to the Navy Yard at Mare Island, for the amount, as claimed by Gamwell and Wheeler, of one thousand nine hundred and forty-three 44/100 dollars, which was assigned to said corporation by said Gamwell and Wheeler to secure said indebtedness, a copy of the statement of which said claim and of said assignment are hereto attached and marked Exhibit "L."

23 A claim against the United States Government on account of supplies furnished to the Navy Yard at Mare Island, for the amount, as claimed by Gamwell and Wheeler, of two thousand seven hundred and eighty-three 91/100 dollars, which

was assigned to said corporation by said Gamwell and Wheeler to secure said indebtedness, a copy of the statement of which said claim and of said assignment are hereto attached and marked Exhibit "M."

A claim against the United States Government on account of supplies furnished to the Navy Yard at Mare Island, for the amount, as claimed by Gamwell and Wheeler, of two hundred and forty-three  $48/100$  dollars, which was assigned to said corporation by said Gamwell and Wheeler to secure said indebtedness, a copy of the statement of which said claim and of said assignment are hereto attached and marked Exhibit "N."

A claim against the United States Government on account of supplies furnished to the Navy Yard at Mare Island, for the amount, as claimed by Gamwell and Wheeler of one thousand three hundred and forty-one  $12/100$  dollars, which was assigned to said corporation by said Gamwell and Wheeler to secure said indebtedness, a copy of the statement of which said claim and of said assignment are hereto attached and marked Exhibit "O."

A claim against the United States Government on account of supplies furnished to the Navy Yard at Mare Island, for the amount, as claimed by Gamwell and Wheeler, of three hundred and 24 ninety-eight  $71/100$  dollars, which was assigned to said corporation by said Gamwell and Wheeler to secure said indebtedness, a copy of the statement of which said claim and of said assignment are hereto attached and marked Exhibit "P."

A claim against the United States Government on account of supplies furnished to the United States Quartermaster's Department, U. S. Army, San Francisco, California, for the amount, as claimed by Gamwell and Wheeler, of two hundred and fifty-eight dollars, which was assigned to said corporation to secure said indebtedness, a copy of the statement of which said claim and of said assignment are hereto attached and marked Exhibit "Q."

A claim against the United States Government on account of supplies furnished to the Navy Yard at Mare Island, for the amount, as claimed by Gamwell and Wheeler, of one thousand eight hundred and sixty-three  $70/100$  dollars, which was assigned to said corporation to secure said indebtedness, a copy of the statement of which said claim and of said assignment are hereto attached and marked Exhibit "R."

A claim against the United States Government on account of supplies furnished to the Navy Yard at Bremerton, for the amount, as claimed by Gamwell and Wheeler, of four hundred and forty-four  $69/100$  dollars, which was assigned to said corporation to secure said indebtedness, a copy of the statement of which said claim and of said assignment are hereto attached and marked Exhibit "S."

(Signed)

J. W. MAXWELL,  
*Cashier of said Corporation.*

Subscribed and sworn to before me this 4th of June, 1907.

[NOTARIAL SEAL.]

RALPH S. STACY,  
*Notary Public in and for the State  
of Washington, Residing at Seattle.*

*Exhibit "A" to Proof of Debt Due National Bank of Commerce  
of Seattle.*

No. 25545.

Due D.

SEATTLE, WASH., Feb'y 4, 1907. \$17,500.

On demand after date, without grace, I promise to pay to the order of

The National Bank of Commerce of Seattle

Seventeen thousand five hundred dollars for value received, with interest from date at the rate of eight per cent. per annum until paid. Principal and interest payable only in U. S. Gold Coin. For value received, each and every party signing or endorsing this note hereby waives presentment, demand, protest and notice of non-payment thereof, binds himself thereon as a principal, not  
26 as a surety, and promises in case suit is instituted to collect the same or any portion thereof, to pay such additional sums as the court may adjudge reasonable as attorney's fees in such suit.

(Signed)

GAMWELL & WHEELER.

R. R. S.

Copy.

Address, \_\_\_\_\_.

Exhibit "A."

*Exhibit "B" to Proof of Debt Due National Bank of Commerce of  
Seattle.*

No. 25633.

Due D.

SEATTLE, WASH., Feb. 7, 1907. \$11,000.

On demand after date, without grace, I promise to pay to the order of

The National Bank of Commerce of Seattle

Eleven thousand dollars, for value received, with interest from date at the rate of eight per cent. per annum until paid. Principal and interest payable only in U. S. Gold Coin. For value received, each and every party signing or endorsing this note hereby waives presentment, demand, protest and notice of non-payment thereof, binds himself thereon as a principal, not as a surety, and promises, in case  
27 suit is instituted to collect the same or any portion thereof, to pay such additional sums as the court may adjudge reasonable as attorney's fees in such suit.

(Signed)

GAMWELL & WHEELER.



R. R. S.

Copy.

Address ———.

Exhibit "B."

Mar. 14/07, P'd % .....	349.75
Balance .....	10,650.25
Mar. 27/07 P'd %.....	1,353.91
Balance .....	9,296.34
April 12/07 P'd %.....	113.59
Bal. ....	9,182.75

*Exhibit "C" to Proof of Debt Due National Bank of Commerce of Seattle.*

No. 25744.

Due 4/16/07.

SEATTLE, WASH., Feb'y 13, 1907. \$10,000.

Thirty days after date, without grace, I promise to pay to the order of

The National Bank of Commerce of Seattle

Ten thousand dollars for value received, with interest from maturity at the rate of eight per cent. per annum until paid. Principal and interest payable only in U. S. Gold Coin. For value received, each and every party signing or endorsing this note hereby waives presentment, demand, protest and notice of non-payment thereof, binds himself thereon as a principal, not as a surety, and promises, in case suit is instituted to collect the same or any portion thereof, to pay such additional sums as the court may adjudge reasonable as attorney's fees in such suit.

(Signed)

GAMWELL &amp; WHEELER.

Copy.

R. R. S.

Address 633 Pioneer Bldg.

Extended 30 days.

Exhibit "C."

*Exhibit "D" to Proof of Debt Due National Bank of Commerce of Seattle.*

Requisition No. 4

Order No. W. O. 4972

Vessel S. S. Salatis

Car No. ———.

Original.

Duplicate.

Triplicate.

Quadruplicate.

Isthmian Canal Commission.

Official Certificate of Inspection.

Marks: 1096-A.

This is to certify that in accordance with instructions received from F. H. Harrison, Asst. Pur. Agt., Tacoma, Wash., dated No-



29 vember 10, 1906, copy herewith, I have inspected and accepted lumber at the mills, "ship side," at Mukilteo, Washington, order placed with Gamwell & Wheeler, and that the kind, quality and manufacture are in accordance with the specifications, construed in the spirit of the Contract dated Nov. 2, 1906, Lumber Association, as follows:

No. of pieces.	Dimensions.	Description.	Sup. Ft. B. M.
600	3x10—14	Rough Douglas Fir	21,000
952	3x10—16	" " "	38,080
1765	3x10—20	" " "	88,250
1159	8x16—32	" " "	395,605
4476			542,935

Date Jan. 31, 1907.

(Signed)

J. M. HAYES,  
Inspector.

(Duplicate.)  
Exhibit "D."

30 *Exhibit "D" (Continued) to Proof of Debt Due National Bank of Commerce of Seattle.*

[Billhead of Gamwell & Wheeler.]

SEATTLE, WASHINGTON, January 31, 1907.

No. No. 4972.  
F. O. B. La Boca.  
Order No. 82.  
Car No. —.  
Initials —.  
Route Str. Salitis.

Sold to Isthmian Canal Commission,  
La Boca, Panama.  
Shipped to La Boca, Panama.

600 Pcs. 3x10—14.....	21000		
952 Pcs. 3x10—16.....	38080		
1765 Pcs. 3x10—20.....	88250		
		147330 ft. at 34.50.....	5082.89
1159 Pcs. 8x16—32.....	395605	ft. at 36.50.....	14449.58
			19532.47

For value received we hereby assign the above account to the National Bank of Commerce of Seattle.

(Signed)

GAMWELL & WHEELER.

(Duplicate.)  
Exhibit "D."

31 *Exhibit "E" to Proof of Debt Due National Bank of Commerce of Seattle.*

[Billhead of Gamwell &amp; Wheeler.]

SEATTLE, WASHINGTON, January 2, 1907.

No. Cont. 2390.

F. O. B. Req. 69 C. &amp; R.

Order No. ——— Class No. 25.

Car No. ———.

Initials ———.

Route ———.

Sold to General Storekeeper,  
Navy Yard, Mare Island.  
Shipped to California.

Spars, as follows:

1.	6	44' long, 12" dia. in middle.....	14.52	87.12
2.	6	46' long, 14" dia. in middle.....	17.48	104.88
3.	6	50' long, 15" dia. in middle.....	21.00	126.00
4.	6	55' long, 16" dia. in middle.....	27.50	165.00
5.	6	60' long, 16" dia. in middle.....	32.40	194.40
6.	6	75' long, 16" dia. in middle.....	40.50	273.00
7.	6	80' long, 24" dia. in middle.....	46.40	278.40
8.	6	65' long, 17" dia. in middle.....	50.05	300.30
9.	6	70' long, 17" dia. in middle.....	89.60	537.60

---

 \$2,036.70

32 For value received we hereby assign the above account to the National Bank of Commerce.

(Signed)

GAMWELL & WHEELER,  
By ARTHUR GAMWELL.

(Duplicate.)  
Exhibit "E."

*Exhibit "F" to Proof of Debt Due National Bank of Commerce of Seattle.*

[Billhead of Gamwell &amp; Wheeler.]

SEATTLE, WASHINGTON, 12/29/06.

No. 2776.

Order No. ———.

Initials ———.

Route Steamer.

F. O. B. ———.

Car No. ———.

Sold to General Storekeeper,  
Navy Yard, Puget Sound.  
Shipped to Bremerton, Washington.

10141 ft. 1" sugar pine, rough, at	\$64.00.....	649.02
2172 ft. 2" do.	74.00.....	160.73

---

 \$809.75

We hereby assign the above account, amounting to \$809.75, to the National Bank of Commerce.

(Signed)

GAMWELL & WHEELER,  
By ARTHUR GAMWELL.

(Duplicate.)  
Exhibit "F."

33 *Exhibit "G" to Proof of Debt Due National Bank of Commerce of Seattle.*

[Billhead of Gamwell & Wheeler.]

SEATTLE, WASHINGTON, Feb. 15, 1907.

No. 2001.

Class 56, Req. 17½ C. & R.

F. O. B. —.

Order No. —.

Initials —.

Car No. —.

Route Edith.

Sold to General Storekeeper, Navy Yard,  
Mare Island, Calif.  
Shipped to —.

5 Pcs.	10x10x54	2250	at	\$27.50.....	61.88
4 Pcs.	4x10x60	800	at	28.50.....	22.80
2 Pcs.	4x12x30	240	at	29.50.....	7.08
3 Pcs.	4x12x42	504	at	34.00.....	17.14
6 Pcs.	4x12x54	1296	at	40.00.....	51.84
8 Pcs.	4x12x56	1792	at	40.00.....	71.68
1 Pcs.	4x12x84	336	at	48.00.....	16.13
					<hr/>
					\$248.55

Oregon Pine.

For value received, we hereby assign the above account to the National Bank of Commerce.

(Signed)

GAMWELL & WHEELER,  
By R. E. DOWNIE.

(Duplicate.)  
Exhibit "G."

34 *Exhibit "H" to Proof of Debt Due National Bank of Commerce of Seattle.*

[Billhead of Gamwell & Wheeler.]

SEATTLE, WASHINGTON, February 15, 1907.

No. Cont. 2776.

F. O. B. Req. 81, C. & R.

Order No. Class 43.

Initials (Ref. 66).

Car No. —.

Route —.

Item.

Sold to General Storekeeper,  
Navy Yard, Mare Island.  
Shipped to California.

1 2023 feet, Quarter White Oak, 1¼", at  
per M. .... \$120.00 \$242.76



18 THE NATIONAL BANK OF COMMERCE OF SEATTLE VS.

36 Exhibit "J" to Proof of Debt Due National Bank of Commerce of Seattle.

[Billhead of Gamwell & Wheeler.]

SEATTLE, WASHINGTON, December 19th, 1906.

No. Cont. 3170.

F. O. B. Req. 11, Nav. N. T. S.

Order No. —.

Car No. —.

Initials —.

Sold to General Storekeeper,  
Naval Training Station,  
Shipped to San Francisco, Cal.

Route. —.

Item: Rough redwood, clear and dry:

93, 1024 ft. 1 x 12 x 16'	40.00	40.96
94, 1007 ft. 1 x 14 x 16'	44.00	44.30
95, 1024 ft. 1 x 16 x 16'	46.00	47.10
96, 1000 ft. 1 1/4 x 12	44.00	44.00
97, 1002 ft. 1 1/2 x 12	46.00	46.09
98, 1008 ft. 2 x 12	46.00	46.36

\$268.81

For value received, we hereby assign the above account to the National Bank of Commerce.

(Signed)

GAMWELL & WHEELER,  
By ARTHUR GAMWELL.

(Duplicate.)

Exhibit "J."

37 Exhibit "K" to Proof of Debt Due National Bank of Commerce of Seattle.

[Billhead of Gamwell & Wheeler.]

SEATTLE, WASHINGTON, February 15th, 1907.

No. Cont. 2776.

F. O. B. Req. 81, C. & R.

Order No. Class 40.

Initials —.

Sold to General Storekeeper,  
Navy Yard, Mare Island.  
Shipped to California.

Car No. (Ref. 65)

Route —.

Item.

18 Tallow-wood, as follows:

2 Pcs. 16" x 20" x 10'  
2 Pcs. 16" x 20" x 12'  
4 Pcs. 16" x 20" x 20' 1984 ft.

2 Pcs. 16" x 13" x 10' 364 ft. 8"  
1 Pcs. 16" x 14" x 10')

1 Pcs. 16" x 14" x 12') 410 ft. 8"  
 2 Pcs. 16" x 15" x 12'  
 2 Pcs. 16" x 15" x 20' 1280 ft.  
 2 Pcs. 16" x 16" x 10')  
 8 Pcs. 16" x 16" x 12') 2474 ft. 8"

26

6496 ft. at \$74.00 \$480.70

38 For value received we hereby assign the above account to  
 the National Bank of Commerce.

(Signed) GAMWELL & WHEELER,  
 By R. E. DOWNIE.

(Duplicate.)  
 Exhibit "K."

*Exhibit "L" to Proof of Debt Due National Bank of Commerce of  
 Seattle.*

[Billhead of Gamwell & Wheeler.]

SEATTLE, WASHINGTON, February 7th, 1907.

No. Cont. 2776.

F. O. B. Req. 81, C. & R.

Order No. Class 44 (part)

Car No. —.

Initials —.

Route Str. Edith.

Sold to General Storekeeper,

.. Navy Yard.

Shipped to Mare Island, Cal.

Oregon Pine Ship Plank as follows:

4 x 10	3938 ft.			
4 x 12	18140 "	22078 ft. at .....	\$52.00	\$1148.06

Oregon Pine Ship Lumber, as follows:

6 x 8	6379 ft.			
12 x 12	7608 "			
12 x 16	2784 "	16761 ft. at .....	\$40.00	670.44
16 x 16	2603	2603 " " .....	48.00	124.94

\$1943.44

39 For value received we hereby assign this account to the  
 National Bank of Commerce.

(Signed) GAMWELL & WHEELER,  
 By ARTHUR GAMWELL.

(Duplicate)  
 Exhibit "L."

*Exhibit "M" to Proof of Debt Due National Bank of Commerce of Seattle.*

[Billhead of Gamwell & Wheeler.]

SEATTLE, WASHINGTON, *December 14th, 1906.*

No. Cont. 2776.

F. O. B. Req. 81 C. & R.

Order No. —.

Car No. —.

Initials Marked "W."

Route Steamer "Edith."

Sold to General Storekeeper,  
Mare Island Navy Yard.  
Shipped to Mare Island, Cal.

Oregon Pine Ship Plank.

9395 ft., 4 x 10 at .....	\$52.00	\$488.54
27068 " 4 x 12 " .....	52.00	1407.54

Oregon Pine Ship Timbers:

7158 ft. 8 x 8 at .....	\$40.00	286.32
7608 " 12 x 12 at .....	40.00	304.32
2784 " 12 x 16 at .....	40.00	111.36
2603 " 16 x 16 at .....	45.00	117.14

40 Oregon Pine Spar Stock:

1431 ft. 4 1/2 x 4 1/2—16 at .....	48.00	68.69
		<hr/>
		\$2783.91

For value received, we hereby assign the above account to the National Bank of Commerce.

(Signed)

GAMWELL & WHEELER,  
By ARTHUR GAMWELL.

(Duplicate.)

Exhibit "M."

*Exhibit "N" to Proof of Debt Due National Bank of Commerce of Seattle.*

[Billhead of Gamwell &amp; Wheeler.]

SEATTLE, WASHINGTON, Feb. 15, 1907.

No. 3170.

F. O. B. Class 86.

Order No. —.

Car No. —.

Initials —.

Sold to General Storekeeper,  
Navy Yard, Mare Island, Cal.  
Route Edith. Shipped to —.

## No. 1 Oregon Pine S1S.

17	pes.	1 x 6 x 10	85		
52	"	12	312		
45	"	14	315		
53	"	16	424		
23	"	18	207		
41					
29	"	20	290		
18	"	22	198		
41	"	24	492		
— 2323 at \$38.50.....				\$89.44	

## No. 1 Oregon Pine S2S.

12	"	1 x 12 x 10	120		
15	"	12	180		
11	"	14	154		
14	"	16	224		
16	"	18	288		
9	"	20	180		
— 1146 at \$38.50.....				44.12	

## No. 1 Flooring.

25	"	1 x 6 x 10	125		
35	"	12	210		
25	"	14	175		
85	"	16	680		
15	"	18	135		
35	"	20	350		
10	"	22	110		
— 1785 at \$40.00.....				71.40	
		1 x 4 x 16	373		
		18	30		
		20	167		
		22	73		
		24	320		
— 963 at \$40.00.....				38.52	

\$243.48



42 (Duplicate.)

For value received we hereby assign the above account to the  
National Bank of Commerce.

(Signed)

GAMWELL & WHEELER,  
By R. E. DOWNIE.

Exhibit "N."

*Exhibit "O" to Proof of Debt Due National Bank of Commerce of  
Seattle.*

[Billhead of Gamwell &amp; Wheeler.]

SEATTLE, WASHINGTON, *February 3rd, 1907.*

No. Cont. 2001.

F. O. B. Class 54.

Order No. ———.

Car No. (Ref. 24 G. &amp; W.).

Initials ———.

Route S. S. "Edith."

Sold to General Storekeeper,  
Navy Yard, Mare Island.  
Shipped to Mare Island, Cal.

Oregon Pine, Merchantable, No. 1.

Item.				
12	4 x 10—36	480 ft.....	23.50	\$11.28
11	4 x 10—44	4253 ft.....	25.50	108.45
	4 x 10—48	160 ft.....	25.50	4.08
13	4 x 10—60	1400 ft.....	28.00	39.20
	4 x 10—52	173 ft.....	28.00	48.44
9	6 x 6 —24	216 ft.....	22.50	4.86
43				
7	6 x 8 —24	288 ft.....	22.50	6.48
8	6 x 8 —58	2320 ft.....	29.50	68.44
6	10 x 10—30	1000 ft.....	22.50	22.50
4	10 x 10—34	2550 ft.....	23.00	58.65
5	10 x 10—40	3000 ft.....	23.00	69.00
3	10 x 10—42	5250 ft.....	25.00	131.25
2	10 x 10—54	1800 ft.....	27.50	49.50
1	10 x 10—60	4000 ft.....	27.50	110.00

*Exhibit "O"—(Continued.)*

Oregon Pine Ship Plank, Select.

18	4 x 12—30	240 ft.....	29.50	\$7.08
21	4 x 12—40	320 ft.....	31.00	9.92
22	4 x 12—42	3192 ft.....	34.00	108.52
23	4 x 12—44	3344 ft.....	34.00	113.67

	4 x 12—48	384 ft.....	34.00	13.05
24	4 x 12—52	2080 ft.....	38.00	79.04
25	4 x 12—56	1792 ft.....	40.00	71.68
	4 x 12—58	232 ft.....	44.00	10.20
26	4 x 12—60	1920 ft.....	44.00	84.48
27	4 x 12—64	1792 ft.....	48.00	86.01
28	4 x 12—68	528 ft.....	48.00	25.34

---

\$1341.12

For value received, we hereby assign the above account to the  
National Bank of Commerce.

(Signed)

GAMWELL & WHEELER,  
By ARTHUR GAMWELL.

(Duplicate.)  
Exhibit "O."

44 *Exhibit "P" to Proof of Debt Due National Bank of Commerce of Seattle.*

[Billhead of Gamwell & Wheeler.]

SEATTLE, WASHINGTON, Feb. 15th, 1907.

Class 44 Req. 81 C. & R.

No. 2776.

F. O. B. \_\_\_\_\_.

Order No. \_\_\_\_\_.

Car No. \_\_\_\_\_.

Initials \_\_\_\_\_.

Sold to General Storekeeper, Navy Yard, Mare Island, Calif.  
Route Edith. Shipped to \_\_\_\_\_.

6	pcs.	4 x 12 x 30	720 at \$52.00.....	\$37.44
4	"	32	512 " 52.00.....	26.62
2	"	34	272 " 52.00.....	14.14
9	"	36	1296 " 52.00.....	67.39
1	"	38	152 " 52.00.....	7.90
1	"	40	160 " 52.00.....	8.32
1	"	8 x 8 x 36	192 " 40.00.....	7.68
1	"	40	213 " 40.00.....	8.52
2	"	44	469 " 40.00.....	18.76
1	"	48	256 " 40.00.....	10.24
1	"	12 x 12 x 40	480 " 40.00.....	19.20
1	"	42	504 " 40.00.....	20.16
1	"	12 x 16 x 36	576 " 40.00.....	23.04
45				
1	"	38	608 " 40.00.....	24.32
1	"	44	704 " 40.00.....	28.16
1	"	16 x 16 x 38	811 " 45.00.....	36.50
1	"	42	896 " 45.00.....	40.32

---

\$398.71

Oregon Pine Ship Plank.

For value received, we hereby assign the above account to the National Bank of Commerce.

(Signed)

GAMWELL & WHEELER,  
By R. E. DOWNIE.

(Duplicate.)  
Exhibit "P."

*Exhibit "Q" to Proof of Debt Due National Bank of Commerce of Seattle.*

[Billhead of Gamwell & Wheeler.]

SEATTLE, WASHINGTON, December 10th, 1906.

No. Cont. 7592.

F. O. B. Req. A. T. P. I. 8376.

Order No. —.

Car No. —.

Initials —.

Sold to Depot Quartermaster, San Francisco, via Seattle.  
Route —. Shipped to —.

15 sets, Stock & Dies, "Duplex," viz.....	\$258.00
9 sets #3½, ½" to 2" without cut-off.	
6 sets #5, 2½" to 4" without cut-off.	

46

10 sets, Extra Dies for "Duplex" stocks and dies, viz:

6 sets #3½.

4 " #5.

For value received we hereby assign the above account to the Seattle National Bank.

(Signed)

GAMWELL & WHEELER,  
By R. E. DOWNIE.

(Duplicate.)  
Exhibit "Q."

*Exhibit "Q" (Continued) to Proof of Debt Due National Bank of Commerce of Seattle.*

[Billhead of Gamwell &amp; Wheeler.]

SEATTLE, WASHINGTON, December 10th, 1906.

No. Cont. 468.

F. O. B. —.

Order No. —.

Sold to Quartermaster's Department, U. S. Army, San Francisco,  
Cal., via Seattle, Wash.

Car No. —.

Initials —.

Route —.

Shipped to —.

15 sets, Stock &amp; Dies. "Duplex," as follows:

9 sets	#3½, ½" to 2"	10.00	90.00
6 "	#5, 2½" to 4"	22.00	132.00

10 sets, Extra Dies for "Duplex" Stocks &amp; Dies, viz:

47			
6 sets	#3½	2.00	12.00
4 "	#5½	6.00	24.00

---

\$258.00For value received, we hereby assign the above account to the  
National Bank of Commerce.

(Signed)

GAMWELL & WHEELER,  
By ARTHUR GAMWELL.(Duplicate.)  
Exhibit "Q."

*Exhibit "R" to Proof of Debt Due National Bank of Commerce of Seattle.*

[Billhead of Gamwell &amp; Wheeler.]

SEATTLE, WASHINGTON, February 15, 1907.

No. Cont. 2523.

F. O. B. Req. 7 N. S. B.

Order No. —.

Car No. —.

Initials —.

Sold to General Storekeeper, Navy Yard, Mare Island.

Route —.

Shipped to California.

Oregon Pine, No. 1, Clear, V. G., not seasoned, as follows:

Pcs.			
2	3 x 6—10'	30	ft.
11	—12'	198	ft.
22	—14'	462	ft.
48			
179	—16'	4296	ft.
45	—18'	1215	ft.
16	—20'	450	ft.
1	—22'	33	ft.
10	—25'	360	ft.
<hr/>			
7044 feet at \$40.00 per M.....			231.76
41	1 1/4 x 4—12'	205	ft.
88	—14'	513	ft.
479	—16'	3193	ft.
45	—18'	337	ft.
45	—20'	375	ft.
28	—22'	257	ft.
163	—24'	1630	ft.
<hr/>			
6510 feet at \$38.00.....			247.38
13	1 1/2 x 4—12'	78	ft.
19	—14'	133	ft.
198	—16'	1584	ft.
19	—18'	171	ft.
13	—20'	130	ft.
3	—22'	33	ft.
13	—24'	156	ft.
<hr/>			
2285 ft. at \$38.00 per M.....			868.50

102	2 x 4—12'	816 ft.
121	—14'	1129 ft.

49

27	—16'	288 ft.
14	—18'	168 ft.
57	—20'	760 ft.
37	—22'	543 ft.
59	—24'	944 ft.

---

4648 feet at \$38.00 per M..... 176.62

13	3 x 4—12'	156 ft.
70	—14'	980 ft.
131	—16'	2096 ft.
43	—18'	774 ft.
28	—20'	560 ft.
15	—22'	330 ft.
81	—24'	1944 ft.

---

6840 feet at \$40.00 per M..... 273.60

1	2 x 4—12'	8 ft.
2	—14'	19 ft.
1	—16'	11 ft.
1	—18'	12 ft.
11	—20'	147 ft.
3	—22'	44 ft.
11	—24'	176 ft.

---

417 feet at \$38.00 per M..... 15.84

---

\$1863.70

50 (Duplicate.)

For value received, we hereby assign the above account to the  
National Bank of Commerce.

(Signed)

GAMWELL & WHEELER,  
By R. E. DOWNIE.

Exhibit "R."

*Exhibit "S" to Proof of Debt Due National Bank of Commerce of  
Seattle.*

[Billhead of Gamwell & Wheeler.]

SEATTLE, WASHINGTON, December 28th, 1906.

No. Cont. 2522.

F. O. B. Sch. 112 Class 72.

Order No. N. S. F. No. 1 P. S.

Car No. ———.

Initials ———.

Route ———.

Sold to General Storekeeper,  
Puget Sound Navy Yard.  
Shipped to Bremerton, Washington.

(Flat head) screws, wood, brass, bright finish:

19	15	gross	3/8"	# 3	.....	.12	1.80
20	10	gross	1/2"	# 3	.....	.13	1.30
21	10	gross	1/2"	# 4	.....	.14	1.40
22	15	gross	1/2"	# 5	.....	.15	2.25
23	15	gross	1/2"	# 6	.....	.16	2.40
24	15	gross	1/2"	# 7	.....	.19	2.85
25	15	gross	1/2"	# 8	.....	.21	3.15
51							
26	5	gross	5/8"	# 6	.....	.18	.90
27	15	gross	5/8"	# 7	.....	.21	3.15
28	15	gross	5/8"	# 8	.....	.24	3.60
30	20	gross	3/4"	# 5	.....	.18	3.60
31	20	gross	3/4"	# 6	.....	.20	4.00
33	20	gross	3/4"	# 9	.....	.30	6.00
34	10	gross	1"	# 6	.....	.23	2.30
35	10	gross	1"	# 7	.....	.27	2.70
37	15	gross	1"	# 9	.....	.36	5.40
39	10	gross	1"	# 11	.....	.50	5.00
40	20	gross	1"	# 12	.....	.53	10.60
41	10	gross	1"	# 13	.....	.59	5.90
42	20	gross	1"	# 14	.....	.65	13.00
43	5	gross	1 1/4"	# 7	.....	.32	1.60
45	10	gross	1 1/4"	# 9	.....	.41	4.10
46	20	gross	1 1/4"	# 10	.....	.45	9.00
48	20	gross	1 1/4"	# 12	.....	.60	12.00
50	10	gross	1 1/4"	# 14	.....	.76	7.60
54	4	gross	1 1/2"	# 10	.....	.55	2.20
55	8	gross	1 1/2"	# 11	.....	.60	4.80
56	20	gross	1 1/2"	# 12	.....	.69	13.80
57	30	gross	1 1/2"	# 14	.....	.86	25.80
58	30	gross	1 1/2"	# 16	.....	1.08	32.40
59	20	gross	2"	# 12	.....	.89	17.80
61	16	gross	2"	# 16	.....	1.39	22.24

62	14 gross	2", #18.....	1.81	25.34
63	3 gross	2½", #22.....	2.99	8.97
52				
64	6 gross	2½", #24.....	3.31	19.86
65	10 gross	3", #14.....	1.86	18.60
66	10 gross	3", #16.....	2.00	20.00
67	6 gross	3", #18.....	2.59	15.54
68	10 gross	3", #20.....	3.04	30.40
70	10 gross	3½", #20.....	3.50	35.00
Carried Forward .....				\$408.35

Exhibit "S."

*Exhibit "S" (Continued) to Proof of Debt Due National Bank of  
Commerce of Seattle.*

[Billhead of Gamwell &amp; Wheeler.]

SEATTLE, WASHINGTON, — —, 190—.

No. Cont. 2522.

F. O. B. Sch. 112 Class 72.

Order No. N. S. F.—No. 1.

Car No. —.

Initials —.

Route —.

Sold to —.

Shipped to —.

Brot. ford.

# 2 (Cont'd).

(Round head) screws, wood, brass bright finish:

72	10 gross	½", # 8.....	.21	2.10
73	2 gross	¾", #10.....	.34	.68
74	10 gross	⅞", # 8.....	.28	2.80
75	10 gross	⅞", # 9.....	.32	3.20
53				
76	10 gross	1", #10.....	.41	4.10
77	6 gross	1", #12.....	.53	3.18
78	10 gross	1¼", # 9.....	.41	4.10
81	10 gross	1½", #12.....	.69	6.90
82	10 gross	1½", #13.....	.77	7.70
84	2 gross	1¾", #12.....	.79	1.59

Total..... \$444.69

For value received, we hereby assign the above account to the  
National Bank of Commerce.

(Signed)

GAMWELL & WHEELER,  
By ARTHUR GAMWELL.

(Duplicate.)

Exhibit "S."



[Endorsed:] Proof of Debt Due to The National Bank of Commerce of Seattle. Filed June 4th, 1907. 2 P. M. John P. Hoyt, Referee.

In the United States District Court for the Western District of Washington, Northern Division.

In Bankruptcy.

In the Matter of the Estate of GAMWELL & WHEELER, Bankrupts.

54 *Objections of Barber Asphalt Paving Co. to Allowance of Preferences and Securities Claimed by the Seattle National Bank and National Bank of Commerce.*

Comes now the Barber Asphalt Paving Company, and respectfully alleges as follows, to wit:

That it is one of the general creditors of Arthur Gamwell and Philip Wheeler, copartners as Gamwell & Wheeler, bankrupts, and which has filed its claim herein against such bankrupts;

That the Seattle National Bank and the National Bank of Commerce have filed certain claims herein against these bankrupts, and together therewith have filed certain claims against the United States Government for goods, wares and merchandise sold and delivered by Arthur Gamwell, and by Gamwell & Wheeler to the said United States Government, which accounts against said Government, and the payment therefor, are claimed by the said bankrupts respectively to have been assigned by the said Gamwell & Wheeler to said banks as collateral security for moneys alleged to have been advanced by said banks respectively to Arthur Gamwell and to Gamwell & Wheeler.

That the Barber Asphalt Paving Company objects and excepts to the allowance of these assigned securities, or of any of them, on the ground that the assignments thereof are invalid, and that said claims against the Government belong to the creditors generally of said bankrupts, for the following reasons and grounds, to wit:

1. For the reason that said assignments were all and each of them without any consideration whatsoever.

2. For the reason that they were in violation of section 60 of the Bankrupt Act of the United States for the year of 1898 as amended by the Act of Congress of date February 3, 1903.

3. Because in contravention of section 3477, Revised Statutes of the United States, and sec. 3737, Revised Statutes of the United States.

These exceptions and objections are made on behalf of itself and of all other general creditors herein or who desire to join therein and to share their proportion of the costs attendant thereon.

COOLEY & HORAN,  
PETERS & POWELL,

*Attorneys for Barber Asphalt Paving Company.*

Service of within objections and receipt of copy thereof admitted this 1st day of July, 1907.

G. E. DE STEIGUER,  
*Attorney for National Bank of Commerce.*

[Endorsed:] Objections of Barber Asphalt Paving Co. to  
56 Allowing Preferences and Securities claimed by Seattle Nat'l  
Bank and Nat'l Bank of Commerce. Filed as of July 10th,  
1907. 2 P. M. John P. Hoyt, Referee.

In the United States District Court for the Western District of  
Washington, Northern Division.

In Bankruptcy.

In the Matter of the Estate of GAMWELL & WHEELER, Bankrupts.

*Objections of Mukilteo Lumber Co. to Allowance of Preferences and  
Securities Claimed by Seattle National Bank and National Bank  
of Commerce.*

Comes now the Mukilteo Lumber Company and respectively  
alleges as follows, to wit:

That it is one of the general creditors of Arthur Gamwell and  
Philip Wheeler, copartners as Gamwell & Wheeler, bankrupts, and  
which has filed its claim herein against such bankrupts.

That the Seattle National Bank and the National Bank of Com-  
merce have filed certain claims herein against these bankrupts, and  
together therewith have filed certain claims against the United States  
Government for goods, wares and merchandise sold and delivered  
by Arthur Gamwell, and by Gamwell & Wheeler to the said United  
States Government, which accounts against said Government, and  
the payment therefor, are claimed by the said bankrupts

57 respectively to have been assigned by the Gamwell & Wheeler  
to said banks as collateral security for moneys alleged to  
have been advanced by said banks respectively to Arthur Gamwell  
to Gamwell & Wheeler.

That the Mukilteo Lumber Company objects and excepts to the  
allowance of these assigned securities, or of any of them, on the  
ground that the assignments thereof are invalid, and that said claims  
against the Government belong to the creditors generally of said  
bankrupts, for the following reasons and grounds, to wit:

1. For the reason that said assignments were all and each of them  
without consideration whatsoever.

2. For the reason that they were in violation of section 60 of the  
Bankrupt Act of the United States for the year 1898 as amended by  
the Act of Congress of date February 3d, 1903.

3. Because in contravention of section 3477, Revised Statutes of  
the United States, and section 3737, Revised Statutes of the United  
States.

These exceptions and objections are made on behalf of itself and

of all other general creditors herein or who desire to join therein and to share their proportion of the cost attendant thereon.

COOLEY & HORAN,  
*Attorneys for the Mukilteo Lumber Company.*

58 [Endorsed]: Objections. Filed July 10th, 1907, 2 P. M.  
John P. Hoyt, Referee.

In the United States District Court for the Western District of  
Washington, Northern Division.

In Bankruptcy.

In the Matter of the Estate of GAMWELL & WHEELER, Bankrupts.

*Objections of St. Paul & Tacoma Lumber Co. to Allowance of Preferences and Securities Claimed by Seattle National Bank and National Bank of Commerce.*

Comes now the St. Paul and Tacoma Lumber Company, and respectively alleges as follows:

That it is one of the general creditors of Arthur Gamwell and Philip Wheeler, copartners as Gamwell & Wheeler, bankrupts, and which has filed its claim herein against such bankrupts:

That the Seattle National Bank and the National Bank of Commerce have filed certain claims herein against these bankrupts and together therewith have filed certain claims against the United States Government for goods, wares and merchandise sold and delivered by Arthur Gamwell and by Gamwell and Wheeler to the said United States Government, which accounts against said Government  
59 and payment thereof are claimed by the said banks respectively to have been assigned by the said Gamwell and Wheeler to said banks as collateral security for moneys alleged to have been advanced by said banks respectively to Arthur Gamwell and Gamwell and Wheeler;

That said St. Paul and Tacoma Lumber Company objects and excepts to the allowance of these assigned securities, or of any of them, on the ground that the assignments thereof are invalid, and that said claims against the Government belong to the creditors generally of said bankrupts for the following reasons and grounds, to wit:

1. For the reason that said assignments were all and each of them without consideration whatsoever.

2. For the reason that they were in violation of sec. 60 of the Bankrupt Act of the United States for the year 1898, as amended by the Act of Congress of date February 3d, 1903.

3. Because in contravention of sections 3477 and 3737 of the Revised Statutes of the United States.

PETERS & POWELL,  
*Attorneys for St. Paul & Tacoma Lumber Company.*

Service of within objections and receipt of copy thereof admitted this 18th day of July, 1907.

BAUSMAN & KELLEHER,  
*For Seattle Nat'l Bank.*  
 G. E. DE STEIGUER,  
*For National Bank of Commerce.*

60 [Endorsed]: Objections of St. Paul & Tacoma Lumber Company to allowing Preference and Securities claimed by Seattle Nat'l Bank and Nat'l Bank of Commerce. Filed as of July 10th, 1907, 2 P. M. John P. Hoyt, Referee.

In the United States District Court for the Western District of Washington, Northern Division.

In Bankruptcy. No. 3453.

In the Matter of the Estate of GAMWELL & WHEELER, Bankrupts.

*Objections of R. E. Downie, Trustee, to Allowance of Preference and Securities Claimed by Seattle National Bank and National Bank of Commerce.*

Comes now R. E. Downie, Trustee, and respectively reports and alleges:

That with the claims filed by the Seattle National Bank and by the National Bank of Commerce herein, there were a number of claims of Gamwell & Wheeler, and of Arthur Gamwell against the United States Government for goods, wares and merchandise sold and delivered by Arthur Gamwell and Gamwell & Wheeler to the said United States Government, which are claimed to have been assigned by the said Gamwell & Wheeler to the said banks respectively  
 61 as collateral security for moneys alleged to have been advanced by said banks respectively to Arthur Gamwell and to Gamwell & Wheeler;

That your trustee is informed and believes that these assignments are invalid, and objects and excepts to their allowance as security for the claims of said banks, but alleges and claims that they belong to the creditors generally of said bankrupts, and to this trustee as their representative, for the following reasons and grounds, to wit:

1. For the reason that said assignments were all and each of them without consideration whatsoever.

2. For the reason that they were in violation of sec. 60 of the Bankrupt Act of the United States for the year 1898, as amended by the Act of Congress of date February 3d, 1903. the United States and section 3737 of the Revised Statutes of the United States.

R. E. DOWNIE, *Trustee.*

[Endorsed]: Objections to Secured Claims. Filed July 1st, 1907, at 2 P. M. John P. Hoyt, Referee.

62 In the United States District Court for the Western District of Washington, Northern Division.

In Bankruptcy. No. 3453.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER, Copartners Doing Business under the Firm Name of Gamwell & Wheeler, Bankrupts.

*Stipulation of Facts.*

It is hereby stipulated and agreed by and between the Seattle National Bank, by Bausman & Kelleher, its attorneys; the National Bank of Commerce, by Geo. E. de Steiguer, its attorney; R. E. Downey, Trustee of the above-entitled bankrupts by Messrs. Kerr & McCord, his attorneys; the Barber Asphalt Paving Company and the Mukilteo Lumber Company by their attorneys, Peters & Powell and Cooley & Horan, that the facts in relation to the claims against the Government of the United States, assigned by said bankrupts to the above-mentioned banks as collateral security for the indebtedness due from said bankrupts to said banks, and to the allowance of which claims as security for such indebtedness the above-named Trustee and the Barber Asphalt Paving Company and the Mukilteo Lumber Company have objected to, are as follows:

63 That each and all of said claims against the United States Government, so assigned, were claims for money due from the Government of the United States to the said bankrupt upon account of contracts entered into between said bankrupts and the United States, for the furnishing of materials by said bankrupts to various departments of said Government; that said assignments were each and all voluntarily made in consideration of a loan made by said bank to said bankrupts at the time of said assignments and as collateral security for the repayment of said loans and without notice to the other creditors of said bankrupts. That all of such assignments were made after the entering into of said contracts and after partial performance thereof by said bankrupts before the allowance of any such claims of the ascertainment of the amount due thereon, or the issuing of any warrant for the payment thereof, and that none of said assignments were executed in the presence of any witnesses at all, and that none of them recite any warrant for the payment of the claim assigned and that none of them were acknowledged by any officer having authority to take acknowledgment of deeds, or any other acknowledging officer at all, and that none of them were certified as being acknowledged by any officer. The said loans to wit of  
 64 said banks exceeded in amount the value of said collaterals so assigned to secure the same and there is now due to each of said banks on account of said loans an amount much in excess of the value of the said collaterals so assigned to each of said banks

respectively. The claims of said banks and the objections thereto on file are made a part hereof.

SEATTLE NATIONAL BANK,  
By BAUSMAN & KELLEHER, *Its Attorneys.*  
NATIONAL BANK OF COMMERCE,  
By G. E. DE STEIGUER, *Its Attorneys.*  
R. E. DOWNEY, *Trustee,*  
By KERR & McCORD, *His Attorneys.*  
ST. PAUL & TACOMA LUMBER CO. AND  
BARBER ASPHALT PAVING COMPANY,  
By PETERS & POWELL,  
COOLEY & HORAN,  
*Its Attorneys.*  
MUKILTEO LUMBER COMPANY,  
By COOLEY & HORAN, *Its Attorneys.*

[Endorsed:] Stipulation. Filed July 10th, 1907 at 2 P. M.  
John P. Hoyt, Referee.

65 In the District Court of the United States for the Western  
District of Washington, Northern Division.

In Bankruptcy. No. 3453.

In the Matter of the Estate of ARTHUR GAMWELL and PHILIP  
WHEELER, Copartners Doing Business as Gamwell & Wheeler,  
Bankrupts.

*Order or Decree of Referee in Bankruptcy.*

The Seattle National Bank having heretofore filed herein its claim against Arthur Gamwell and Philip Wheeler, partners as Gamwell and Wheeler, bankrupts herein, amounting to the sum of twenty-two thousand five hundred eighty-two 19/100 dollars, with interest, therein claiming that there had been assigned to said bank by said bankrupts certain claims against the United States, and by reason of said assignment claiming as to the amount collected upon said claims against the United States preference over the other creditors of said bankrupts, and The National Bank of Commerce of Seattle having filed herein its claim in the sum of thirty-seven thousand one hundred forty-nine 85/100 dollars and interest, therein claiming that

66 there had been assigned to said bank by said bankrupts to secure said claim, certain claims against the United States Government, and said last-mentioned bank, by reason of said assignments claiming a preference, so far as the proceeds of said claims are concerned, over the other creditors of said bankrupts, and thereafter objections having been filed to the allowance of said securities aforesaid by R. E. Downie as trustee of the above-entitled bankrupts, the Barber Asphalt Paving Company, the Mukilteo Lumber Company and the St. Paul and Tacoma Lumber Company, and

thereafter a stipulation having been entered into and filed by the Seattle National Bank, said National Bank of Commerce of Seattle, said R. E. Downie, trustee as afore-said, said St. Paul and Tacoma Lumber Company, said Barber Asphalt Paving Company and said Mukilteo Lumber Company, acting by their respective attorneys, as to the facts relating to said claims of said banks and said assignments to secure the same, which said claims of said banks, said objections, the claims of said objections and said stipulation are hereby referred to and made a part of this order, and thereafter the matter of the allowance of said claims and of the securities therefor and of said objections thereto having been duly set down for argument before the undersigned for the 10th day of July, 1907, at two o'clock P. M.,

and there appearing at said hearing said trustee in person and  
 67 by his attorneys, Kerr & McCord, said Seattle National Bank by Bausman & Kelleher, its attorneys, said National Bank of Commerce of Seattle by George E. de Steiguer, its attorney, and said Barber Asphalt Paving Company, Mukilteo Lumber Company, and St. Paul and Tacoma Lumber Company by Peters & Powell and Cooley & Horan, their attorneys, and said matter having been submitted to the undersigned upon said claims, objections and stipulation and the argument of counsel:

This Referee, after due consideration thereof and being fully advised in the premises, by reason of the facts so stipulated and the law, does hereby order, adjudge and decree as follows:

1. That the claims of said banks be and each of them is hereby allowed in the amount therein stated, to wit: The claim of the Seattle National Bank in the sum of twenty-two thousand five hundred eighty-two 19/100 dollars, with interest, and the claim of said The National Bank of Commerce in the sum of thirty-seven thousand one hundred forty-nine 85/100 dollars and interest.

2. That said banks are and each of them respectively is entitled to receive on account of claims against the United States Government so assigned to it and shown by the claims of said bank respectively  
 68 on file herein whatever amount may be collected from the United States Government on said claims, and the securities of said banks by reason thereof are hereby allowed.

3. That the trustee herein is hereby ordered, as collections of said claims are made, to pay the same to the banks holding assignments thereof.

Dated this 22d day of July, 1907.

JOHN P. HOYT, *Referee.*

[Endorsed:] Order. Filed July 22d, 1907, at 2 P. M. John P. Hoyt, Referee.



In the District Court of the United States for the Western District of Washington, Northern Division.

In Bankruptcy. No. 3453.

In the Matter of ARTHUR GAMWELL & PHILIP WHEELER, Copartners as Gamwell & Wheeler, Bankrupts.

*Order of Referee in Bankruptcy Amending Order of July 22, 1907.*

It appearing that in reducing to form the order made and filed herein on the twenty-second day of July, 1907, there was inadvertently included in the form of the order so made and filed the paragraph numbered three requiring the trustee to pay certain  
69 moneys, when collected by him, to the banks named in said order, which said direction as to payment was not considered upon the hearing which resulted in the making of said order, and as to which question it was not intended that any order or decision should be made. It is therefore now here

Ordered that said paragraph three of said order in words and figures as follows, to wit:

"That the trustee herein is hereby ordered, as collections of said claims are made, to pay the same to the banks holding assignments thereof."

—be and the same hereby is stricken out, vacated and held for naught. The other portions of said order to be and remain in full force and effect, and said order to stand and be in force to the same extent, and to such extent only, as it would have been and would be if said paragraph there- had never been included therein.

Dated at Seattle, in said district, this second day of August, 1907.

JOHN P. HOYT,

*Referee in Bankruptcy.*

[Endorsed:] Order Amending Order of July 22d, 1907. Filed Aug. 2d, 1907, 9 A. M. John P. Hoyt, Referee.

70 In the District Court of the United States for the Western District of Washington, Northern Division.

In Bankruptcy. No. 3453.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER, Copartners Doing Business as Gamwell & Wheeler.

*Petition of Barber Asphalt Paving Co. et al. Referee in Bankruptcy for Review.*

To the Hon. John P. Hoyt, Referee in Bankruptcy:

Your petitioners, the Barber Asphalt Paving Company, the Mukilteo Lumber Company and the St. Paul and Tacoma Lumber Company, corporations, respectfully show:



1. That your petitioners are general creditors of said bankrupts, and that their claims have been filed, and no exceptions thereto have been taken.

2. That on the 22d day of July, 1907, an order was made and entered herein, by your Honor, allowing the claims of the Seattle National Bank and the National Bank of Commerce, and adjudging that said banks were each entitled to receive, on account of certain claims against the United States Government theretofore assigned to them, respectively, by said bankrupts, whatever amount  
71 may be collected from the United States upon said claim; and directing the trustee herein to pay such collections to said banks holding the assignments thereof respectively.

3. That such order was and is erroneous, in that it adjudged that said banks are, and each of them respectively is, entitled to receive on account of said assigned claims against the United States Government whatever amounts may be collected from the United States Government on said claims; and in that said order allowed the said assignments to stand as valid, and as security to said banks, respectively; and in that said order directed the trustee in this matter to pay the collections upon said assigned claims, as the same are made, to said banks holding the assignments thereof.

4. Wherefore, your petitioners feeling aggrieved because of such order, pray that the same may be reviewed, as provided in the bankruptcy law of 1898, and general order No. 27.

Dated at Seattle, Washington, July 26th, 1907.

BARBER ASPHALT PAVING CO.,  
MUKILTEO LUMBER CO.,  
ST. PAUL & TACOMA LUMBER CO.,  
By COOLEY & HORAN,  
PETERS & POWELL,  
*Their Attorneys.*

72 STATE OF WASHINGTON,  
*County of King, ss:*

R. G. Stevenson, being first sworn, on oath says: I am the Northwestern Manager of the Barber Asphalt Paving Company, one of the petitioners in the foregoing petition, a nonresident corporation; that I make this affidavit on its behalf, and on behalf of its copetitioners; I have read the foregoing petition, know the contents thereof, and believe the same to be true.

R. G. STEVENSON.

Subscribed and sworn to before me this 29th day of July, 1907.  
[SEAL.]

WILLIAM T. LAUBE,  
*Notary Public in and for the State of  
Washington, Residing at Seattle, Wash.*

Service of within petition and receipt of copy thereof admitted this 29th day of July, 1907.

BAUSMAN & KELLEHER.  
G. E. DE STEIGUER.

[Endorsed:] Petition for Review. Filed July 30th, 1907, 11  
A. M. John P. Hoyt, Referee.

73 In the District Court of the United States for the Western District of Washington, Northern Division.

In Bankruptcy. No. 3453.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER, Copartners Doing Business as Gamwell & Wheeler, Bankrupts.

*Certificate and Return of Referee in Bankruptcy on Petition for Review.*

A petition for review of the order made herein on the twenty-second day of July, 1907, having been filed herein, the undersigned, the Referee in Bankruptcy before whom the above-entitled matter is pending, and who made the said order, does hereby certify and return:

That the hearing which resulted in the making of said order was upon an agreed statement of facts, stipulated and agreed to by the parties interested in said hearing, and that for that reason it is the opinion of said undersigned that no further certificate and return is necessary or proper than the certification to the Judge of the above-named court of the claims of the banks, respectively, to which objections were filed and upon which said hearing was had, the

74 objections of the Trustee and of certain creditors thereto, and said agreed Statement of Facts. Said undersigned, however, upon his own motion did, on the second day of August, 1907, make and file an order herein correcting and amending said order of July twenty-second, 1907, which said order should also be before the Judge of said court.

Said undersigned, therefore, respectfully transmits the claims of the banks, hereinbefore referred to, the objections thereto, the said Statement of Facts, said order of July twenty-second, 1907, and the order amending the same made August second, 1907, together with said petition for review, as a sufficient certificate and return herein. All of which is respectfully submitted.

Dated at Seattle, in said district, this second day of August, 1907.

JOHN P. HOYT,  
*Referee in Bankruptcy.*

[Endorsed:] Certificate and Return. Filed in the U. S. District Court, Western Dist. of Washington, Aug. 3, 1907, 10 A. M. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

75 United States District Court, Western District of Washington,  
Northern Division.

No. 3453.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER, Copart-  
ners as Gamwell & Wheeler, Bankrupts.

*Memorandum Decision of District Court as to Validity of Assign-  
ments of Claims Against United States Government.*

The Seattle National Bank and the National Bank of Commerce each advanced money to the bankrupts and receive assignments of bills and accounts for materials furnished to the United States Government, constituting claims against the Government not paid, audited nor allowed and by virtue of said assignments, the two banks assert ownership of the claims and the exclusive right to receive whatever sums of money may be payable thereon. The validity of the assignments is disputed by certain creditors and also by the Trustee of the estate.

It does not appear by the record that the Government has paid any of these claims to anyone, nor that the money due or to become due, has become subject to the jurisdiction of this Court.

76 The subject of the controversy is not funds nor warrants convertible into money of which the court has acquired control, but unliquidated claims. Section 3477, U. S. R. S., specifically prohibits voluntary assignments of such claims, and all of the adjudged cases cited in the argument recognize the principle that such assignments convey no rights whatever, enforceable against the Government and create no liens in favor of the assignees.

United States v. Gillis, 95 U. S. 407;

Spofford v. Kirk, 97 U. S. 484;

Railway Co. v. United States, 112 U. S. 733;

Ball v. Halsell, 161 U. S. 72;

Nutt v. Knut, 200 U. S. 12;

Henningesen v. U. S. Fidelity & Guaranty Co., 143 Fed. Rep. 812.

After claims have been paid, the Government is not interested in the disposition of the money, and for that reason courts in some of the cases, in adjusting rights between contractors, their creditors, administrators and assignees, have given effect to contracts containing promises respecting payments to become due on claims against the Government.

Goodman v. Niblock, 162 U. S. 556;

Hobbs v. McLean, 117 U. S. 567;

Freedman's Saving & Trust Co. v. Shepherd, 127 U. S. 494;

77 York v. Conde, 42 N. E. Rep. 193.

These decisions do not establish an exception upon which the assignees of the bankrupts in this case can maintain their contention. By operation of law, the rights of the bankrupt passed to

the Trustee, and he is the only person authorized to collect the money and give acquittances.

Erwin v. United States, 97 U. S. 392;

Price v. Forrest, 173 U. S. 410.

The decisions in the cases of Bailey v. United States, 109 U. S. 432, and Hardaway & Prowell v. National Surety Co., 150 Fed. Rep. 465, are not analogous to this case and do not overrule the other cases above cited, nor establish an exception to the general rule, which must control my decision in the present case.

The two banks are entitled to prove their claims as general creditors, but they are not entitled to the rights asserted with respect to the several claims against the Government. The order made by the referee will be modified accordingly.

C. H. HANFORD, Judge.

[Endorsed:] Memorandum Decision as to the Validity of Assignments of Claims Against the United States Government. Filed Nov. 8, 1907. R. M. Hopkins, Clerk. By A. N. Moore, Deputy.

78 United States District Court, Western District of Washington,  
Northern Division.

No. 3453.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER, Copartners as Gamwell & Wheeler, Bankrupts.

*Order of District Court Allowing Claims of Seattle National Bank and National Bank of Commerce, etc.*

This matter coming on regularly to be heard upon the order of the referee allowing, as valid, the assignments to the Seattle National Bank and to the National Bank of Commerce, of certain warrants from the United States to the bankrupts, Gamwell & Wheeler, and certain claims against the Government on behalf of said bankrupts upon contracts of said bankrupts with the Government, and upon the exceptions and objections of the Mukilteo Lumber Company and the St. Paul & Tacoma Lumber Company, and the Trustee in bankruptcy on behalf of general creditors, and the Court having heard and considered the facts as stipulated herein by the parties, and arguments of counsel, finds that said objections to said order of the referee are well taken.

79 It is therefore ordered and adjudged that the claims of the Seattle National Bank and the National Bank of Commerce be allowed, as filed in this bankruptcy proceeding, as general unsecured claims, and that the assignments from Gamwell & Wheeler to said banks of the various warrants, vouchers, orders and claims, as scheduled with the trustee in bankruptcy are invalid, and that said warrants, orders and claims are a part of the general assets of the

bankrupt's estate for the security of all creditors alike, and without any preference or lien thereon in favor of either of said banks.

Done in open court this 18th day of November, 1907.

C. H. HANFORD, *Judge.*

Each bank excepts to the order disallowing the securities and exception is allowed.

C. H. H.

Service of within order and receipt of copy thereof admitted this 12th day of November, 1907.

G. E. DE STEIGUER,

*Attorney for National Bank of Commerce.*

SEATTLE NAT'L BANK,

By BAUSMAN & KELLEHER,

*Its Att'ys.*

80 [Endorsed]: Order Allowing Exceptions of Trustee and Certain General Creditors to Ruling of Referee in Favor of Certain Banking Creditors as to Assigned Claims. Filed in the U. S. District Court, Western Dist. of Washington. Nov. 18, 1907, 10:30 A. M. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3453.

In re ARTHUR GAMWELL and PHILIP WHEELER, Copartners as Gamwell & Wheeler, Bankrupts.

*Petition for Appeal and Order Allowing Appeal, etc.*

The National Bank of Commerce of Seattle, a creditor herein, conceiving itself aggrieved by the order made and entered on the 18th day of November, 1907, in the above-entitled cause, which order sustains the exceptions and objections of the Mukilteo Lumber Company, the St. Paul & Tacoma Lumber Company, and the Trustee in Bankruptcy, to the claim of the National Bank of Commerce of Seattle as filed herein with various assignments from Gamwell & Wheeler to it, with various warrants, vouchers, orders and

81 claims, does hereby appeal from such judgment to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors herewith and prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

G. E. DE STEIGUER,

*Attorney for the National Bank of Commerce of Seattle.*

The foregoing petition is granted and the appeal allowed upon the giving of a bond or undertaking, as required by law, in the sum of five hundred dollars.

Dated November 23d, 1907.

C. H. HANFORD,  
*Judge Presiding in said District Court.*

[Endorsed:] Petition for Appeal. Filed in the U. S. District Court, Western Dist. of Washington, November 23, 1907. R. M. Hopkins, Clerk.

82 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3453.

In re ARTHUR GAMWELL and PHILIP WHEELER, Copartners as Gamwell & Wheeler, Bankrupts.

*Assignment of Errors.*

Now on this 23d day of November, 1907, came The National Bank of Commerce of Seattle, by George E. de Steiguer, its attorney, and says that in the order made in this cause on the 18th day of November, 1907, sustaining the objections of Mukilteo Lumber Company and St. Paul & Tacoma Lumber Company and the Trustee in Bankruptcy to the claim of The National Bank of Commerce of Seattle, manifest error did occur and that the order of this District Court is erroneous in sustaining said objections and in pronouncing invalid the assignments from Gamwell & Wheeler to The National Bank of Commerce of Seattle, for the following reasons:

83 First. That under the laws of the United States, the assignments of the claims, vouchers and warrants held by the bankrupts against the United States and assigned by the bankrupts to The National Bank of Commerce of Seattle, and made a part of said bank's claim herein, were good and valid.

Second. That under the laws of the United States relating to bankruptcy, the assignment of the foregoing claims was a valid security given to The National Bank of Commerce of Seattle before any period forbidden by the bankruptcy laws of the United States as to such security.

Third. That under the bankruptcy laws of the United States, the assignment of the aforesaid claims to this bank by the bankrupt was for a valuable and present consideration and was good under the bankruptcy laws of the United States.

Fourth. That under the laws of the United States relating to the assignment of claims against the United States, the assignments made by the bankrupts aforesaid to this bank were valid as between the trustee in bankruptcy and other creditors and entitled to participate as security in favor of this bank.

Wherefore, The National Bank of Commerce of Seattle prays that

the order aforesaid be reversed, that the District Court be directed to enter an order allowing the claim of The National Bank of Commerce of Seattle, with the assignments of claims, vouchers, and warrants as by it filed therewith, and sustaining its right to these as a security.

G. E. DE STEIGUER,

*Attorney for the National Bank of Commerce of Seattle.*

[Endorsed:] Assignment of Errors. Filed in the U. S. District Court, Western Dist. of Washington, Nov. 23, 1907. R. M. Hopkins, Clerk.

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3453.

In re ARTHUR GAMWELL and PHILIP WHEELER, Copartners as Gamwell & Wheeler, Bankrupts.

*Bond on Appeal.*

Know all men by these presents, that we, The National Bank of Commerce of Seattle, as principal, and R. R. Spencer and Ralph S. Stacy as sureties, are held and firmly bound unto R. E. Downie, Trustee in Bankruptcy, and St. Paul & Tacoma Lumber Company and Mukilteo Lumber Company, and Barber Asphalt Paving Company and The Seattle National Bank, each and all, and to their and each of their successors, administrators and assigns, in the full and just sum of five hundred dollars, to which payment, well and truly to be made, we bind ourselves, our and each of our heirs, successors, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 23d day of November, in the year of our Lord, 1907.

Whereas, lately at a District Court of the United States for the Western District of Washington, Northern Division, in a proceeding entitled "In the Matter of Gamwell & Wheeler, Bankrupts," an order was rendered against The National Bank of Commerce of Seattle, from which order said bank has been allowed to appeal, and has caused citation to be issued, citing and admonishing the obligees herein to appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, within thirty days after the date of said citation:

Now, the condition of this obligation is that if The National Bank of Commerce of Seattle shall prosecute this appeal to effect and answer all damages and costs if it fail to make its plea good, then the above obligation is to be void; otherwise to remain in full force and effect.

And we, the said R. R. Spencer and Ralph S. Stacy, the sureties above named, do hereby expressly consent and agree

that in case of any breach in the conditions of this obligation, the said District Court may, upon notice to us of not less than ten days, proceed summarily in the suit in which said bond is given to ascertain the amount which we are bound to pay on account of such breach, and render judgment therefor against us, or either of us and award execution therefor.

[SEAL.]

THE NATIONAL BANK OF COMMERCE  
OF SEATTLE,  
By RALPH S. STACY, *Cash'r.*  
R. R. SPENCER.  
RALPH S. STACY.

[SEAL.]

[SEAL.]

Sealed and delivered in the presence of:

G. E. DE STEIGUER.  
LE ROY M. BACKUS.

STATE OF WASHINGTON,

*Western District of Washington, County of King, ss:*

R. R. Spencer and Ralph S. Stacy, being each first severally sworn, does each of and concerning himself, depose and say: I am one  
87 of the sureties named in and executing the foregoing bond; I am not an attorney or counselor at law, sheriff, clerk or marshal or officer of any kind whatsoever of any court of the State of Washington, or of any court of the United States, or of any court whatsoever; I am worth the sum of five hundred dollars in property situated within the State of Washington and within the Western District of the State of Washington, over and above all my debts and liabilities and exclusive of property exempt from execution.

R. R. SPENCER.  
RALPH S. STACY.

Subscribed and sworn to before me this 23d day of November, 1907.

[SEAL.]

G. E. DE STEIGUER,  
*Notary Public in and for the State of  
Washington, Residing at Seattle.*

The foregoing bond is hereby approved this 23d day of November, 1907.

C. H. HANFORD,  
*United States District Judge.*

[Endorsed:] Bond on Appeal. Filed in the U. S. District Court, West. Dist. of Washington. Nov. 23, 1907. R. M. Hopkins, Clerk.



88 In the United States Circuit Court of Appeals for the Ninth Circuit.

In re ARTHUR GAMWELL and PHILIP WHEELER, Copartners as Gamwell & Wheeler, Bankrupts.

*Citation of Appeal (Copy).*

The United States of America to R. E. Downie, Trustee, and to St. Paul & Tacoma Lumber Company, and to Barber Asphalt Paving Company, and to Mukilteo Lumber Company, and to Gamwell & Wheeler, Bankrupts, and to the Seattle National Bank, Greeting:

You are hereby cited and admonished to be and appear at the session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days after the date of this citation, pursuant to a petition on appeal and an assignment of errors filed in the clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, in the matter of Arthur Gamwell and Philip Wheeler, doing business as Gamwell & Wheeler, Bankrupts, to show cause, if any there be, why the order rendered in said cause on the 18th day of November, 1907, modifying  
89 the order of the referee in bankruptcy, and disallowing the claim of The National Bank of Commerce of Seattle as in the petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 23d day of November, 1907.

[SEAL.]

C. H. HANFORD,  
*United States District Judge.*

Service of the within citation by delivery of a copy to the undersigned, and also service of a copy of the petition for appeal, assignment of errors and bond on appeal in the within-entitled proceeding, is hereby acknowledged this 25th day of November, 1907.

COOLEY & HORAN,

Per W. A. PETERS.

PETERS & POWELL,

*Attorneys for St. Paul & Tacoma Lumber Company, Barber Asphalt Paving Company, and Mukilteo Lumber Company.*

BAUSMAN & KELLEHER,

*Attorneys for The Seattle National Bank.*

KERR & McCORD,

*Attorneys for R. E. Downie, Trustee, & Gamwell & Wheeler, Bankrupts.*

90 [Endorsed:] Citation on Appeal. Filed in the U. S. District Court, Western Dist. of Washington. Nov. 27, 1907.  
R. M. Hopkins, Clerk.

In the District Court of the United States for the Western District  
of Washington, Northern Division.

No. 3453.

In re ARTHUR GAMWELL and PHILIP WHEELER, Copartners as Gam-  
well & Wheeler, Bankrupts.

*Præcipe for Transcript of Record.*

To the Clerk of the above-entitled Court:

You will please prepare and certify transcript for the United States  
Circuit Court of Appeals for the Ninth Circuit, consisting of the fol-  
lowing files, records and papers in the above-entitled cause:

1. Petition for Adjudication (April 16, 1907);
2. Answer Thereto (April 16);
3. Order of Reference (April 16);
4. Order of Adjudication and Appointment of Referee (June  
20);
5. Order Confirming Appointment of Referee (June 20);
6. Claim of The National Bank of Commerce of Seattle  
(June 4);
- 91 7. Objections of Barber Asphalt Paving Co. to Allowance  
of Claim (July 10);
8. Objections of Mukilteo Lumber Co. to same (July 10);
9. Objections of St. Paul and Tacoma Lumber Co. to same  
(July 10);
10. Objections of R. E. Downie, Trustee to Same (July 1);
11. Stipulation Between Banks and Objectors Settling Facts  
(July 10);
12. Order of July 22 Allowing Claims;
13. Order dated Aug. 2 Amending Order of July 22;
14. Petition for Review by Objectors (July 30);
15. Return of Referee filed Aug. 3;
16. Judge Hanford's Memorandum Decision, dated Nov. 8;
17. Order Allowing Exceptions, dated Nov. 18;
18. Petition for Appeal (Nov. 23);
19. Assignment of Errors (Nov. 23);
20. Bond on Appeal (Nov. 23);
21. Citation on Appeal (Nov. 23);
22. This Præcipe (Dec. 6).

G. E. DE STEIGUER,  
*Attorney for the National Bank of  
Commerce of Seattle.*

92 [Endorsed:] Præcipe for Transcript. Filed in the U. S.  
District Court, Western Dist. of Washington, Dec. 6, 1907.  
R. M. Hopkins, Clerk. W. D. Covington, Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

In Bankruptcy. No. 3453.

In re ARTHUR GAMWELL and PHILIP WHEELER, Copartners as Gamwell & Wheeler, Bankrupts.

*Clerk's Certificate to Transcript of Record (Original).*

UNITED STATES OF AMERICA,

*Western District of Washington, ss:*

I, R. M. Hopkins, Clerk of the District Court of the United States for the Western District of Washington, do hereby certify the foregoing seventy-six (76) typewritten pages, numbered from 1 to 76, inclusive, to be a full, true and correct copy of the record and proceedings in the above and therein entitled cause as is called for by the precept of the Attorney for the National Bank of Commerce of Seattle, one of the creditors and appellants in the above-entitled cause, as the same remain of record and on file in the office of the clerk of said court; and that the same constitute the record on appeal herein from the order, judgment and decree, dated November 8, 1907, of the District Court of the United States for the Western District of Washington, to the Circuit Court of Appeals for the Ninth Judicial Circuit.

I further certify that I hereto attach and herewith transmit the original citation issued in this cause.

I further certify that the cost of preparing the foregoing record on appeal is the sum of \$51.70, and that the said sum has been paid to me by G. E. de Steiguer, Esquire, attorney for National Bank of Commerce of Seattle, one of the creditors and appellants herein.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said District Court this 16th day of December, 1907.

[SEAL.]

R. M. HOPKINS, *Clerk.*

In the United States Circuit Court of Appeals for the Ninth Circuit.

In re ARTHUR GAMWELL and PHILIP WHEELER, Copartners as Gamwell & Wheeler, Bankrupts.

94

*Citation on Appeal (Original).*

The United States of America to R. E. Downie, Trustee, and to St. Paul & Tacoma Lumber Company, and to Barber Asphalt Paving Company, and to Mukilteo Lumber Company, and to Gamwell & Wheeler, Bankrupts, and to The Seattle National Bank, Greeting:

You are hereby cited and admonished to be and appear at the session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of

California, within thirty days after the date of this citation, pursuant to a petition on appeal and an assignment of errors filed in the clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, in the matter of Arthur Gamwell and Philip Wheeler, doing business as Gamwell & Wheeler, Bankrupts, to show cause, if any there be, why the order rendered in said cause on the 18th day of November, 1907, modifying the order of the referee in bankruptcy, and disallowing the claim of The National Bank of Commerce of Seattle as in the petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

95      Witness the Honorable Melville W. Fuller, Chief Justice  
of the United States, this 23d day of November, 1907.

[SEAL.]

C. H. HANFORD,

*United States District Judge.*

Service of the within citation by delivery of a copy to the undersigned, and also service of a copy of the petition for appeal, assignment of errors and bond on appeal in the within entitled proceeding, is hereby acknowledged this 25th day of November, 1907.

COOLEY & HORAN,

Per W. A. PETERS,

PETERS & POWELL,

*Attorneys for St. Paul & Tacoma Lumber Company,  
Barber Asphalt Paving Company, and Mukilteo  
Lumber Company.*

BAUSMAN & KELLEHER,

*Attorneys for the Seattle National Bank.*

KERR & McCORD,

*Attorneys for R. E. Downie, Trustee, and  
Gamwell & Wheeler, Bankrupts.*

[Endorsed:] Original. No. 3453. In the Circuit Court of Appeals of the United States for the Ninth Circuit. In re Gamwell and Wheeler, Bankrupts National Bank of Commerce of Seattle, Petitioner. Citation on Appeal. Filed in the U. S. District Court, Western Dist. of Washington. Nov. 27, 1907. R. M. Hop-

96      kins, Clerk. Service of papers in this case may be made  
upon G. E. de Steiguer. Attorney for Petitioner, at No. 618  
— Street, Room 618, New York Block, Seattle, Washington.

[Endorsed:] No. 1527. United States Circuit Court of Appeals for the Ninth Circuit. The National Bank of Commerce of Seattle, a Creditor, Appellant, vs. R. E. Downie, Trustee, St. Paul & Tacoma Lumber Company, Barber Asphalt Paving Company, Mukilteo Lumber Company, Gamwell & Wheeler, Bankrupts, and The Seattle National Bank, Appellee. In the Matter of Arthur Gamwell and Philip Wheeler, Copartners as Gamwell & Wheeler, Bankrupts. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed December 20, 1907.

F. D. MONCKTON, *Clerk.*

97 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1527.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, a Creditor,  
Appellant,

vs.

R. E. DOWNIE, Trustee; ST. PAUL & TACOMA LUMBER COMPANY,  
Barber Asphalt Paving Company, Mukilteo Lumber Company,  
Gamwell & Wheeler, Bankrupts, and The Seattle National Bank,  
Appellees.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER,  
Copartners as Gamwell & Wheeler, Bankrupts.

*Certificate of Clerk U. S. Circuit Court of Appeals to Printed Trans-  
cript of Record.*

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing ninety-six (96) pages, numbered from one (1) to ninety-six (96), inclusive, to be a true copy of the printed Transcript of Record upon appeal from the United States District Court for the Western District of Washington, Northern Division, in the above-entitled case as the original and copies thereof were printed under my supervision pursuant to the provisions of rule 23 of the rules of practice of the said the United States Circuit Court of Appeals for the Ninth Circuit and as the said original remains of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit in the City of San Francisco, in the State of California, this twenty-sixth day of June, A. D. 1908.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

98 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1527.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, a Creditor,  
Appellant,

vs.

R. E. DOWNIE, Trustee; ST. PAUL & TACOMA LUMBER COMPANY,  
Barber Asphalt Paving Company, Mukilteo Lumber Company,  
Gamwell & Wheeler, Bankrupts, and The Seattle National Bank,  
Appellees.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER, Copart-  
ners as Gamwell & Wheeler, Bankrupts.

*Addenda.*

Proceedings had in the United States Circuit Court of Appeals for  
the Ninth Circuit.

99 At a stated term, to wit: the October Term A. D. 1907 of  
the United States Circuit Court of Appeals for the Ninth  
Circuit, held at the Court Room, in the City and County of San Fran-  
cisco, on Monday the seventeenth day of February in the year of our  
Lord one thousand, nine hundred and eight.

Present: The Honorable William B. Gilbert, Circuit Judge; Hon-  
orable Erskine M. Ross, Circuit Judge; Honorable William W.  
Morrow, Circuit Judge.

No. 1527.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, a Creditor,  
Appellant,

vs.

R. E. DOWNIE, Trustee, et al., Appellees.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER, Copart-  
ners as Gamwell & Wheeler, Bankrupts.

No. 1528.

THE SEATTLE NATIONAL BANK, a Creditor, Appellant,

vs.

R. E. DOWNIE, Trustee, et al., Appellees.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER, Copart-  
ners as Gamwell & Wheeler, Bankrupts.

No. 1529.

THE SEATTLE NATIONAL BANK, Petitioner,

vs.

R. E. DOWNIE, Trustee, et al., Respondents.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER, Copart-  
ners as Gamwell & Wheeler, Bankrupts.

No. 1532.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, Petitioner,  
vs.

R. E. DOWNIE, Trustee, et al., Respondents.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER, Copartners as Gamwell & Wheeler, Bankrupts.

100

*Order of Submission.*

Ordered, above-entitled appeals and matters argued by Mr. Daniel Kelleher, counsel for the appellants and petitioners, and Mr. C. J. Horan, counsel for the appellees and respondents, and submitted to the Court for consideration and decision.

101 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1527.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, a Creditor,  
Appellant,  
vs.

R. E. DOWNIE, Trustee, et al., Appellees.

No. 1528.

THE SEATTLE NATIONAL BANK, a Creditor, Appellant,  
vs.

R. E. DOWNIE, Trustee, et al., Appellees.

No. 1529.

THE SEATTLE NATIONAL BANK, Petitioner,  
vs.

R. E. DOWNIE, Trustee, et al., Respondents.

No. 1532.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, Petitioner,  
vs.

R. E. DOWNIE, Trustee, et al., Respondents.

*Opinion U. S. Circuit Court of Appeals.*

MONDAY, May 11, 1908.

Appeal and Petition for Revision and Review from the United States District Court for the Western District of Washington, Northern Division.

102 Bausman & Kelleher, Attorneys for The Seattle National Bank.

George E. de Steiguer, Attorney for the National Bank of Commerce of Seattle.

Peters & Powell, Cooley & Horan, Attorneys for Appellees.

Kerr & McCord, Attorneys for Trustee.

Before Gilbert, Ross, and Morrow, Circuit Judges.

MORFLOW, Circuit Judge, delivered the opinion of the Court:

Arthur Gamwell and Philip Wheeler, partners under the firm name of Gamwell & Wheeler, were adjudged bankrupts in the District Court of the United States for the Western District of Washington, Northern Division, on the 16th day of April, 1907, and the same day R. E. Downie was appointed receiver of the partnership property. Thereafter he was elected and qualified as permanent trustee, and by an order made June 20, 1907, was authorized to collect all sums of money due the bankrupts from the United States Government or any department thereof. On the 4th day of June, 1907, the National Bank of Commerce of Seattle filed its proof of debt against the bankrupt partnership, in the sum of \$37,149.85. The proof set forth that the only securities held by said corporation for said debt were certain described claims against the

103 United States Government on account of supplies furnished, and assigned to the bank by the said Gamwell & Wheeler to secure said indebtedness. These claims appear to be sixteen in number, and amount in the aggregate to the sum of \$33,517.48. The first claim is dated December 10, 1906, and the last February 15, 1907. On June 18, 1907 the Seattle National Bank filed its proof of debt against the bankrupt partnership for the sum of \$22,582.19 with interest. The proof set forth that the only securities held by said corporation for said debt were certain described claims against the United States Government, on account of supplies furnished, and assigned to the bank by said Gamwell & Wheeler to secure said indebtedness. The claims appear to be sixty-one in number and amount in the aggregate to \$38,509.32. The first claim is dated September 25, 1906 and the last April 4, 1907.

The respondents filed objections to the allowance of these assigned securities. One of these objections was that the assignments were invalid under Section 3477 of the Revised Statutes of the United States, and that the claims against the Government belonged to the creditors of the bankrupts generally.

On the 10th of July, 1907, the parties hereto entered into a stipulation as to said assigned claims, as follows:

"That the facts in relation to the claims against the Government of the United States, assigned by said bankrupts to the above-mentioned banks as collateral security for the indebtedness due from said bankrupts to said banks, and to the allowance of which claims as security for such indebtedness the above-named Trustee and the Barber Asphalt Paving Company and the Mukilteo Lumber Company have objected to, are as follows:

104 "That each and all of said claims against the United States Government, so assigned, were claims for money due from the Government of the United States to the said bankrupt upon account of contracts entered into between said bankrupts and the United States, for the furnishing of materials by said bankrupts to various departments of said Government; that said assignments were each and all voluntarily made in consideration of a loan made by said bank to said bankrupts



at the time of said assignments and as collateral security for the repayment of said loans and without notice to the other creditors of said bankrupts. That all of such assignments were made after the entering into of said contracts and after partial performance thereof by said bankrupts before the allowance of any of such claims or the ascertainment of the amount due thereon, or the issuing of any warrant for the payment thereof, and that none of said assignments were executed in the presence of any witnesses at all, and that none of them recite any warrant for the payment of the claim assigned and that none of them were acknowledged by any officer having authority to take acknowledgment of deeds, or any other acknowledging officer at all, and that none of them were certified as being acknowledged by any officer. The said loans to each of said banks exceeded in amount the value of said collaterals so assigned to secure the same, and there is now due to each of said banks on account of said loans an amount in excess of the value of the said collaterals so assigned to each of said banks respectively. The claims 105 of said banks and the objections thereto on file are made a part hereof."

The Referee in Bankruptcy, on the 22d of July, 1907, allowed the claim of the Seattle National Bank in the sum of \$22,582.19 and interest and the claim of the National Bank of Commerce in the sum of \$37,149.85 and interest, and ordered and decreed that said banks were each of them respectively entitled to receive on account of claims against the United States Government so assigned to it and shown by the claims of said bank respectively on file, whatever amount might be collected from the United States Government of said claims, and the securities of said banks by reason thereof were allowed and the Trustee was ordered, as collections of said claims were made, to pay the same to the banks holding the assignments thereof. Thereupon the respondents, except the Trustee, petitioned the District Court for a review of the order of the Referee. Upon this review the Judge of the District Court allowed the claims of the banks as general debts, but disallowed their claims of preference. The National Bank of Commerce of Seattle and The Seattle National Bank, have brought this matter to this Court for review, both by appeal and by petition.

The appellees rely upon the provisions of Section 3477 of the Revised Statutes of the United States to support the order of the District Court. That Section is as follows:

"All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the con- 106 sideration therefor, and all powers of attorneys, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority

to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same."

This statute has been before the court in a number of cases and held applicable to all cases where the assignee seeks to enforce the assigned claim against the United States. *United States v. Gillis* 95 U. S. 407, 416; *St. Paul R. R. Co. v. United States* 112 U. S. 733.

In *United States v. Gillis*, *supra*, it was contended on behalf of the assignee of the claimant that the statute was applicable only to claims asserted before the Treasury Department, but the Court said:

We discover nothing in the reason, nothing in the mischief the act is plainly intended to remedy, and nothing in the language employed tending to warrant the admission of any exceptions from the comprehensive provisions made, nothing that can justify our holding that when Congress said all transfers or assignments, partial or entire, absolute or conditional, of claims against the United States shall be null and void, they meant they should be in operation (inoperative) only when presented to the accounting officers of the treasury, but effective when presented everywhere else."

It has also been held applicable to assignments in which a contract is made for the prosecution of a claim against the United States and an assignment is made of a portion of the claim or a lien created on it to secure payment for services rendered in prosecuting the claim. *Ball v. Halsell* 161 U. S. 72; *Nutt v. Knut* 200 U. S. 12. In the latter case the Court, referring to the clause in the contract making the payment of the attorney's compensation a lien upon the claim asserted against the government, said:

"In effect or by its operation it transferred or assigned to the attorney in advance of the allowance of the claim such an interest as would secure the payment of the fee stipulated to be paid. All this was contrary to the statute; for its obvious purpose, in part, was to forbid any one who was a stranger to the original transaction to come between the claimant and the Government, prior to the allowance of a claim, and who, in asserting his own interest or share in the claim, pending its examination, might embarrass the conduct of the business on the part of the officers of the Government.

It has also been held applicable to assigned orders drawn by the owner of a claim against the United States upon the attorneys employed by him in the prosecution of the claim, directing them to pay to a third person certain sums out of any money coming into their hands on account of the claim. *Spofford v. Kirk* 97 U. S. 484. In this case the Court, referring to the language of the statute, says:

"It would seem to be impossible to use language more comprehensive than this. It embraces alike the legal and equitable assignments. It includes powers of attorney, orders, or other authorities for receiving payment of any such claim, or any part or share thereof. It strikes at every derivative interest, in whatever form acquired, and incapacitates every claimant upon the government from creating an interest in the claim in any other than himself."

On the other hand it has been held that the statute does not render invalid an assignment where the original claimant became a bankrupt and assigned his property to an assignee in bankruptcy.

"It does not embrace cases where there has been a transfer of title by operation of law. The passing of claims to heirs, devisees, or assignees in bankruptcy is not within the evil at which the statute aimed." *Erwin v. U. S.* 97 U. S. 393, 397.

It has also been held that the statute did not embrace the case of a voluntary general assignment by an insolvent for the benefit of his creditors. *Goodman v. Niblack* 102 U. S. 556; *Butler v. Gorley* 146 U. S. 303; that it does not render invalid a contract of partnership to furnish supplies to the United States or a  
 109 promise by one to another of the partners to pay a sum already due him under the partnership articles out of money to be received from the United States for such supplies, *Hobbs v. McLean* 117 U. S. 567; that it does not affect the right of a mortgagee of real estate leased to the United States, or of a pledgee of the funds thereof to recover from the mortgagors or pledgors the amount of funds paid to them by the United States. *Freedman Saving & Trust Co. v. Shepherd* and *Shepherd v. Thomson* 127 U. S. 494; that its inhibition of powers of attorney executed in advance of the allowance of the claim and the issuing of a warrant therefor cannot be used to compel a second payment after the amount thereof has been paid to the person authorized by the claimant to receive it. *Bailey v. United States*, 109 U. S. 432; that it does not prevent any court of competent jurisdiction as to subject matter and parties from making such orders as may be necessary or appropriate to prevent one who has a claim for money against the Government from withdrawing the proceeds of such claim from the reach of creditors, provided such orders do not interfere with the examination and allowance or rejection of such claim by the proper officers of the Government, nor in any wise obstruct any action that such officers may legally take under the statute relating to allowance or payment of claims against the United States. *Price v. Forrest* 173 U. S. 410, 423. The purpose of the statute is to protect the Government and not the parties to the assignment. *Goodman v. Niblack*, *supra*. Hence, where a  
 110 claim has been allowed by the accounting officers of the United States, a warrant issued therefor and delivered to the claimant, the Government is no longer concerned with his disposition of the draft or the funds which it represented. *York v. Conde* 147 N. Y. 486; 42 N. E. 193; *Farmers' National Bank v. Robinson* 59 Kan. 777, 53 Pac. 762.

In the present case the claims of Gamwell & Wheeler against the Government of the United States were voluntarily assigned after entry into the contracts and after partial performance, but before the allowance of any such claims, the ascertainment of the amount due thereon or the issuing of any warrant for the payment thereof. None of the assignments was executed in the presence of any witnesses, and none of them recites any warrant for the payment of the claims assigned, and none of them was acknowledged by any officer having authority to take acknowledgments of deeds, and none of them was certified as being acknowledged by any officer. These as-

signments are, therefore, within the express language of the statute, and not within any of its exceptions. They are also within the terms of the statute as interpreted by the Supreme Court in *Spofford v. Kirk*, *supra*, in *St. Paul & Duluth R. R. v. United States*, *supra*, in *Ball v. Halsell*, *supra*, and not within the exceptions mentioned in any of the other cases to which reference has been made. But the transfer of these claims to the trustee in bankruptcy by operation of law comes within the exception declared by the Supreme Court in *Erwin v. United States*, *supra*. It follows that the assignments in question are null and void and that the trustee in bankruptcy is the proper person to receive from the officers of the United States  
 111 Government any and all sums due to the said bankrupts, which when received are a part of the general assets of the bankrupts' estate for the benefit of all creditors alike, and without any preference in favor of either of said banks.

The order of the District Court in each of the above-entitled cases is affirmed.

Endorsed: Opinion. Filed May 11, 1908. F. D. Monckton, Clerk.

112 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1527.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, a Creditor,  
 Appellant,

vs.

R. E. DOWNIE, Trustee; ST. PAUL & TACOMA LUMBER COMPANY, Barber Asphalt Paving Company, Mukilteo Lumber Company, Gamwell & Wheeler, Bankrupts, and The Seattle National Bank, Appellees.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER,  
 Copartners as Gamwell & Wheeler, Bankrupts.

*Decree U. S. Circuit Court of Appeals.*

Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Washington, Northern Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the order of the said District Court in this cause be, and the same is hereby, affirmed, with costs to the appellees.

(Endorsed:) Decree. Filed and Entered May 11, 1908. F. D. Monckton, Clerk.

- 113 At a stated term, to wit: the October Term A. D. 1907 of the United States Circuit Court of Appeals for the Ninth Circuit, held at the Court Room, in the City and County of San Francisco, on Monday the first day of June in the year of our Lord one thousand, nine hundred and eight.

Present: The Honorable William B. Gilbert, Circuit Judge; Honorable Erskine M. Ross, Circuit Judge; Honorable William W. Morrow, Circuit Judge.

No. 1527.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, a Creditor,  
Appellant,  
vs.

R. E. DOWNIE, Trustee, et al., Appellees.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER,  
Copartners as Gamwell & Wheeler, Bankrupts.

*Order Relative to Findings of Fact and Conclusions of Law.*

It is ordered that the Findings of Fact and Conclusions of Law of this Court in the above-entitled cause be, and hereby are, this day filed therein nunc pro tunc as of the eleventh day of May, A. D. 1908.

- 114 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1527.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, a Creditor,  
Appellant,  
vs.

R. E. DOWNIE, Trustee; ST. PAUL & TACOMA LUMBER COMPANY, Barber Asphalt Paving Company, Mukilteo Lumber Company, Gamwell & Wheeler, Bankrupts, and The Seattle National Bank, Appellees.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER,  
Copartners as Gamwell & Wheeler, Bankrupts.

Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

*Findings of Fact and Conclusions of Law.*

- 115 This Court, having considered this case from the transcript of the record submitted to it, makes the following

## Findings of Fact.

## I.

Arthur Gamwell and Philip Wheeler, partners, under the firm name of Gamwell & Wheeler, were adjudged bankrupts in the District Court of the United States for the Western District of Washington, Northern Division, on the 16th day of April, 1907, and on the same day R. E. Downie was appointed receiver of the partnership property. Thereafter, he was elected and qualified as permanent trustee, and by order of the Court, made June 20, 1907, was authorized to collect all sums of money due the bankrupts from the United States government or any department thereof. On the 4th day of June, 1907, the National Bank of Commerce of Seattle filed its proof of debt against the bankrupt partnership, in the sum of Thirty-seven Thousand One Hundred Forty-Nine and 85/100 (\$37149.85). The proof set forth that the only securities held by said corporation for said debt were certain described claims against the United States Government on account of supplies furnished, and assigned to the bank of the said Gamwell & Wheeler to secure said indebtedness. These claims were sixteen in number, and amount in the aggregate to the sum of Thirty-three Thousand Five Hundred Seventeen and 48/100 (\$33517.48) Dollars. The first claim is dated December 10, 1906, and the last February 15, 1907. On June 18, 1907, the

116 Seattle National Bank filed its proof of debt against the bankrupt partnership for the sum of Twenty-one Thousand Five Hundred Eighty-two and 19/100 (\$22582.19) Dollars with interest. The proof set forth that the only securities held by said corporation for said debt were certain described claims against the United States Government on account of supplies furnished and assigned to the bank by said Gamwell & Wheeler to secure said indebtedness. The claims were sixty-one in number and amount in the aggregate to Thirty-eight Thousand Five Hundred Nine and 32/100 (\$38509.32) Dollars. The first claim is dated September 25, 1906, and the last April 4, 1907.

The respondents filed objections to the allowance of these assigned securities. One of these objections was that the assignments were invalid under Section 3477 of the Revised Statutes of the United States, and that the claims against the Government belonged to the creditors of the bankrupts generally.

On the 10th of July, 1907, the parties hereto entered into a stipulation as to said assigned claims, stipulating as to certain facts with regard thereto, which said facts are therefore found by the court as follows:

"That the facts in relation to the claims against the Government of the United States, assigned by said bankrupts to the above mentioned banks as collateral security for the indebtedness due from said bankrupts to said banks, and to the allowance of which claims as security for such indebtedness the above named Trustee and the Barber Asphalt Paving Company and the Mukilteo Lumber Company have objected to, are as follows:

117 "That each and all of said claims against the United States Government, so assigned, were claims for money due from the Government of the United States to the said bankrupts upon account of contracts entered into between said bankrupts and the United States for the furnishing of materials by said bankrupts to various departments of said Government; that said assignments were each and all voluntarily made in consideration of a loan made by said bank at the time of said assignments and as collateral security for the repayment of said loans and without notice to the other creditors of said bankrupts. That all of such assignments were made after the entering into of said contracts and after partial performance thereof by said bankrupts before the allowance of any such claims or the ascertainment of the amount due thereon, or the issuing of any warrant for the payment thereof, and that none of said assignments were executed in the presence of any witnesses at all, and that none of them recite any warrant for the payment of the claim assigned and that none of them were acknowledged by any officer having authority to take acknowledgment of deeds, or any other acknowledging officer at all, and that none of them were certified as being acknowledged by any officer. The said loans to each of said banks exceeded in amount the value of said collaterals so assigned to secure the same, and there is now due to each of said banks on account of said loans an amount in excess of the value of the said collaterals so assigned to each of said banks respectively. The claims of said banks and the objections thereto on file are made a part hereof."

118

## II.

The Referee in Bankruptcy, on the 22nd day of July, 1907, allowed the claim of the Seattle National Bank in the sum of Twenty-two Thousand Five Hundred Eighty-two and 19/100 (\$22582.19) Dollars and interest and the claim of The National Bank of Commerce in the sum of Thirty-seven Thousand One Hundred Forty-nine and 85/100 (\$37149.85) Dollars and interest, and ordered and decreed that said banks were each of them respectively entitled to receive on account of claims against the United States Government so assigned to it and shown by the claims of said bank respectively on file, whatever amount might be collected from the United States Government of said claims, and the securities of said banks by reason thereof were allowed and the Trustee was ordered, as collections of said claims were made, to pay the same to the banks holding the assignments thereof. Thereupon the respondents, except the Trustee, petitioned the District Court for a review of the order of the Referee. Upon this review the Judge of the District Court allowed the claims of the banks as general debts, but disallowed their claims of preference. The National Bank of Commerce of Seattle and The Seattle National Bank have brought this matter to this Court for review, both by appeal and by petition.



As

## Conclusions of Law

from the foregoing facts the Court holds:

## I.

119 That the claim of The Seattle National Bank should be allowed in the sum of Twenty-two Thousand Five Hundred Eighty-two and 19/100 (\$22582.19) Dollars and the claim of The National Bank of Commerce of Seattle in the sum of Thirty-seven Thousand One Hundred Forty-nine and 85/100 (\$37149.85) Dollars should be allowed.

## II.

That the claim of each bank should be so allowed as a general debt, but its claim of preference and its claim for a lien by it made upon said fund so assigned should be disallowed.

WM. W. MORROW,  
*U. S. Circuit Judge.*

(Endorsed:) Docketed No. 1527. In the United States Circuit Court of Appeals for the Ninth Circuit. The National Bank of Commerce of Seattle, a Creditor, Appellant, vs. R. E. Downie, et al. Findings of Fact and Conclusions of Law. Pursuant to Order this day entered, filed Jun- 1, 1908, nunc pro tunc as of May 11, 1908. F. D. Monckton, Clerk. Service of papers in this case may be made upon G. E. de Steiguer, Attorney for National Bank of Com. at No. — street Room 618 New York Block Seattle Washington.

120 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1527.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, Appellant,  
vs.

R. E. DOWNIE, Trustee; ST. PAUL & TACOMA LUMBER COMPANY, Barber Asphalt Paving Company, Mukilteo Lumber Company, Gamwell & Wheeler, Bankrupts, and The Seattle National Bank, Appellees.

*Petition for Appeal and Order Allowing it.*

The National Bank of Commerce of Seattle, a Creditor, conceiving itself aggrieved by the decision and decree of this Court filed herein May 11, 1908, which decision and decree affirms the order of the District Court of the United States for the Western District of Washington, Northern Division, sustaining the exceptions and objections of the Mukilteo Lumber Company, St. Paul & Tacoma Lumber Company, and the Trustee in Bankruptcy, to the claims of this appellant (as filed herein with various assignments from Gamwell &



Wheeler to it, with various warrants, vouchers, orders and claims) does hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors herewith, and prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which this  
 121 decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

GEORGE E. DE STEIGUER,

*Attorney for The National Bank of Commerce of Seattle.*

The foregoing petition for appeal allowed this 1st day of June, 1908.

WM. W. MORROW,

*Circuit Judge.*

(Endorsed:) Docketed. No. 1527. In the United States Circuit Court of Appeals for the Ninth Circuit. The National Bank of Commerce of Seattle, Appellant, vs. R. E. Downie, et al., Appellees. Petition for Appeal and Order Allowing It. Filed Jun- 1, 1908. F. D. Monckton, Clerk. Service of papers in this case may be made upon G. E. de Steiguer, Attorney for Natl. Bk. of Com. at No. — Street, Room 618 New York Block, Washington.

122 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1527.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, Appellant,  
 vs.

R. E. DOWNIE, Trustee; ST. PAUL & TACOMA LUMBER COMPANY, Barber Asphalt Paving Company, Mukilteo Lumber Company, Gamwell & Wheeler, Bankrupts, and The Seattle National Bank, Appellees.

*Assignment of Errors.*

Now on this — day of —, 1908, came The National Bank of Commerce of Seattle, by George E. de Steiguer, its attorney, and says that in the decision and decree made in this cause in the Circuit Court of Appeals on the 11th day of May, 1908, sustaining the objections of the Mukilteo Lumber Company, the St. Paul & Tacoma Lumber Company, and the Trustee in Bankruptcy, to the claim of The National Bank of Commerce of Seattle, manifest error did occur, and that the decree of this United States Circuit Court of Appeals is erroneous in affirming the order of the District Court of the United States for the Western District of Washington, in sustaining said objections, and in pronouncing invalid the assignments from Gamwell & Wheeler to The National Bank of Commerce of Seattle, for the following reasons:

First. That under the laws of the United States, the assignments of the claims, vouchers and warrants held by the bankrupts  
 123 against the United States and assigned by the bankrupts to The National Bank of Commerce of Seattle, and made a part of said bank's claim herein, were good and valid.

Second. That under the laws of the United States relating to bankruptcy, the assignment of the foregoing claims was a valid security given to The National Bank of Commerce of Seattle before any period forbidden by the bankruptcy laws of the United States as to such security.

Third. That under the bankruptcy laws of the United States, the assignment of the aforesaid claims to this bank by the bankrupt, was for a valuable and present consideration and was good under the bankruptcy laws of the United States.

Fourth. That under the laws of the United States relating to the assignment of claims against the United States, the assignments made by the bankrupts aforesaid to this bank were valid as between the trustee in bankruptcy and other creditors and entitled to participate as security in favor of this bank.

Wherefore The National Bank of Commerce of Seattle prays that the United States Circuit Court of Appeals for the Ninth Circuit be reversed in its decision and decree herein complained of, and that both that Court and the District Court aforesaid be directed to enter an order allowing the claim of The National Bank of Commerce of Seattle, with the assignments of claims, vouchers and warrants as by it filed therewith, and sustaining its right to these as a security.

GEORGE E. DE STEIGUER,

*Attorney for National Bank of Commerce of Seattle.*

(Endorsed:) Docketed. No. 1527. In the United States Circuit Court of Appeals for the Ninth Circuit. The National Bank of Commerce of Seattle, Appellant, v. R. E. Downie, et al., Appellees. Assignment of Errors. Filed Jun-1, 1908. F. D. Monckton, Clerk. Service of papers in this case may be made upon G. E. de Steiguer, Attorney for Nat'l Bk. of Com'ce at No. — Street, Room 618 New York Block. *Washington.*

125 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1527.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, Appellant,  
vs.

R. E. DOWNIE, Trustee; ST. PAUL & TACOMA LUMBER COMPANY, Barber Asphalt Paving Company, Mukilteo Lumber Company, Gamwell & Wheeler, Bankrupts, and The Seattle National Bank, Appellees.

*Bond on Appeal.*

Know all men by these presents that we, The National Bank of Commerce of Seattle, a principal, and R. R. Spencer and H. C. Henry, as sureties, are held and firmly bound unto R. E. Downie, Trustee in Bankruptcy, Arthur Gamwell and Philip Wheeler, co-partners as Gamwell & Wheeler, St. Paul & Tacoma Lumber Company, Mukilteo Lumber Company, Barber Asphalt Paving Com-

pany, and The Seattle National Bank, each and all, and to their and each of their successors, administrators and assigns, in the full and just sum of Five Hundred (\$500.00) Dollars, to which payment, well and truly to be made, we bind ourselves, our and each of our heirs, successors, executors and administrators, jointly and severally by these presents.

Sealed with our seals this 27th day of May, 1908.

126 Whereas lately, at a District Court of the United States for the Western District of Washington, Northern Division, in a proceeding entitled "In the Matter of Gamwell & Wheeler, Bankrupts," an order was rendered against The National Bank of Commerce of Seattle, from which order said bank did appeal to the United States Circuit Court of Appeals for the Ninth Circuit; and,

Whereas, in said Circuit Court of Appeals there was, on the 11th day of May, 1908, a decision and decree entered affirming the order of the District Court; and,

Whereas, from this latter decision and decree of May 11 The National Bank of Commerce of Seattle is taking an appeal;

Now, the condition of this obligation is that if The National Bank of Commerce of Seattle shall prosecute this appeal to effect and answer all damages and costs if it fail to make its plea good, this obligation is to be void; otherwise to remain in full force and effect.

THE NATIONAL BANK OF COMMERCE  
OF SEATTLE,

By RALPH S. STACY, *Its Cashier*.  
R. R. SPENCER.  
H. C. HENRY.

127 STATE OF WASHINGTON,  
*County of King, ss:*

R. R. Spencer and H. C. Henry, being each first severally sworn, does each of and concerning himself depose and say: I am one of the sureties named in and executing the foregoing bond; I am not an attorney or counselor at law, or sheriff, clerk or marshal, or officer of any kind whatsoever of any court of the State of Washington, or of any court of the United States, or of any court whatsoever; I am a resident and householder within the Western Judicial District of the State of Washington; I am worth the sum of Five Hundred (\$500.00) Dollars in property situated within the State of Washington and within the Western District of Washington, over and above all my debts and liabilities and exclusive of property exempt from execution.

R. R. SPENCER.  
H. C. HENRY.

Subscribed and sworn to before me this 27th day of May, 1908.

[SEAL.]

S. G. GRAVES,  
*Notary Public in and for the State of  
Washington, Residing at Seattle.*

The foregoing bond approved this 1st day of June, 1908.

WM. W. MORROW,  
*Circuit Judge.*

128 (Endorsed:) Docketed. No. 1527. In the United States Circuit Court of Appeals for the Ninth Circuit. The National Bank of Commerce of Seattle, a Creditor, vs. R. E. Downie, et al. Bond on Appeal. Filed Jun- 1, 1908. F. D. Monckton, Clerk. Service of papers in this case may be made upon G. E. de Steiguer, Attorney for National Bank of Commerce at No. — Street, Room — Block, *Washington.*

129 In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 1527.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, Appellant,  
v. \*  
R. E. DOWNIE, Trustee, et al., Appellees.

*Certificate of Associate Justice.*

Whereas Arthur Gamwell and Philip Wheeler, partners under the firm name of Gamwell & Wheeler, were adjudged bankrupts in the District Court of the United States for the Western District of Washington in April, 1907, and such proceedings were had in that bankruptcy that R. E. Downie was appointed permanent trustee, and thereafter The National Bank of Commerce of Seattle filed its proof of debt against Gamwell & Wheeler in the sum of \$37,149.85, accompanied by collateral securities therefor, which securities were an assignment of certain described claims against the United States Government on account of supplies furnished to the United States; and,

Whereas the assigned claims aggregated \$33,517.48, all of which claims were alleged to be previous to the bankruptcy; and,

Whereas objections were filed to the allowance of these assigned securities, on the ground that the assignment to the bank was invalid under Section 3477 of the Revised Statutes of the

130 United States and that the claims assigned belonged to the creditors of the bankrupt generally; and,

Whereas, on further proceedings in that cause the District Court aforesaid did deny to the bank its right to such assignment, and did, while approving said bank's claim as a debt, disallow and reject its right and claim to the securities assigned aforesaid; and,

Whereas, on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, such order of the District Court was on May 11, 1908, affirmed, on the ground that the assignment of the claims as security was invalid under Section 3477 aforesaid; and,

Whereas the aforesaid bank desires to appeal to the Supreme Court of the United States from the last named order and decree, and it

appears that Section 3477 of the Revised Statutes aforesaid has received various interpretations throughout the United States, and that a final construction of its scope, force and intent is necessary for the proper and speedy adjudication of the estates of insolvents under the bankruptcy acts of the United States;

Now, therefore, on motion of Frederick Bausman, solicitor for appellants, This is to certify that in my opinion the determination of the question involved in the appeal aforesaid, that is to say, whether assignments of claims against the United States to creditors before insolvency, and for a valuable consideration, pass to the bankrupt's trustee in bankruptcy for the benefit of his estate  
 131 generally, or whether creditors holding *bona fide* such assigned claims for a valuable consideration can retain them for their security as against the bankrupt's estate, or the bankrupt's trustee in bankruptcy, or the creditors of the bankrupt generally, is essential to a uniform construction of said bankruptcy act throughout the United States.

DAVID J. BREWER,

*Associate Justice of the Supreme Court of the United States.*

June 2, 1908.

(Endorsed:) Original. Docketed. No. 1527. In the United States Circuit Court of Appeals for the Ninth Circuit. The National Bank of Commerce of Seattle, Appellant, v. R. E. Downie, Trustee, et al., Appellees. Certificate of Associate Justice. Filed Jun. 8, 1908. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit. Bausman & Kelleher, Attorneys for Appellant, 1116-1124 Alaska Bld'g, Seattle, Wash.

132 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1527.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, a Creditor,  
 Appellant,

vs.

R. E. DOWNIE, Trustee, ST. PAUL & TACOMA LUMBER COMPANY, Barber Asphalt Paving Company, Mukilteo Lumber Company, Gamwell & Wheeler, Bankrupts, and The Seattle National Bank, Appellees.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER, Copartners as Gamwell & Wheeler, Bankrupts.

*Certificate of Clerk U. S. Circuit Court of Appeals to Proceedings and Record.*

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing thirty-five (35) pages, numbered from one (1) to thirty-five (35),

inclusive, to be a true copy of the Assignment of Errors and of all proceedings had in the above-entitled case in the said the United States Circuit Court of Appeals for the Ninth Circuit, including the Opinion filed therein as the same remain and appear of record in my office, and that the same in connection with the preceding certified copy of the printed Transcript of Record constitute a true copy of the complete record as ordered by counsel for the appellant in the above-entitled case and the Transcript of Record therein upon appeal to the Supreme Court of the United States.

133 Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit in the City of San Francisco, in the State of California, this twenty-sixth day of June, A. D. 1908.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

134 In the Supreme Court of the United States.

No. 1527.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, Appellant,

v.

R. E. DOWNIE, Trustee, ST. PAUL & TACOMA LUMBER COMPANY, Barber Asphalt Paving Company, Mukilteo Lumber Company, Gamwell & Wheeler, Bankrupts, and The Seattle National Bank, Appellees.

*Citation on Appeal.*

The United States of America to R. E. Downie, Trustee, St. Paul & Tacoma Lumber Company, Barber Asphalt Paving Company, Mukilteo Lumber Company, Gamwell & Wheeler, Bankrupts, and to The Seattle National Bank, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be held at the city of Washington within sixty days after the date of this citation, pursuant to a petition on appeal and an assignment of errors filed in the clerk's office of the United States Circuit Court of Appeals for the Ninth Circuit, in a certain cause therein, in which The National Bank of Commerce of Seattle was appellant and R. E. Downie and others appellees, and which cause is numbered 1527, to show cause, if any there be, why the decision and decree of said Circuit Court of Appeals, filed in its clerk's office May 11, 1908, affirming the order of the District Court of the United States for the Western District of Washington, and disallowing the claim of The National Bank of Commerce of Seattle as in the petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 1 day of June, 1908.

WM. W. MORROW,  
*Circuit Judge.*

- 135 Copy of the within Citation on Appeal received and service acknowledged this 5th day of June, 1908.

BAUSMAN & KELLEHER,  
*Attorneys for Seattle National Bank.*

KERR & McCORD,  
*Attorneys for R. E. Downie, Trustee, and  
Gamwell & Wheeler, Bankrupts.*

COOLEY & HORAN,  
PETERS & POWELL,  
*Attorneys for Mukilteo Lumber Company, St. Paul &  
Tacoma Lumber Company, and Barber Asphalt  
Paving Company.*

- 136 [Endorsed:] Docketed. No. 1527. In the Circuit Court of the United States for the Ninth Circuit. The National Bank of Commerce of Seattle, Appellant v. R. E. Downie, et al., Appellees. Citation on Appeal. Filed Jun- 12 1908. F. D. Monckton, Clerk U. S. Circuit Court of Appeals, for the Ninth Circuit. Service of papers in this case may be made upon G. E. de Steiguer Attorney for Nat'l B'k of Com. at Room 618 New York Block *Washington*.

Endorsed on cover. File No. 21265. U. S. Circuit Court Appeals, 9th Circuit. Term No. 203. The National Bank of Commerce of Seattle, appellant, vs. R. E. Downie, Trustee, St. Paul & Tacoma Lumber Company et al. Filed July 20th, 1908. File No. 21,265.

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES

October Term, 1908.

No. 82.

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THE SEATTLE NATIONAL BANK, APPELLANT.

R. E. DOWNIE, TRUSTEE; ST. PAUL & TACOMA LUMBER  
COMPANY, BARBER ASPHALT PAVING COMPANY,  
MUKILTEO LUMBER COMPANY, GAMWELL &  
WHEELER, BANKRUPT, AND NATIONAL BANK OF  
COMMERCE OF SEATTLE.

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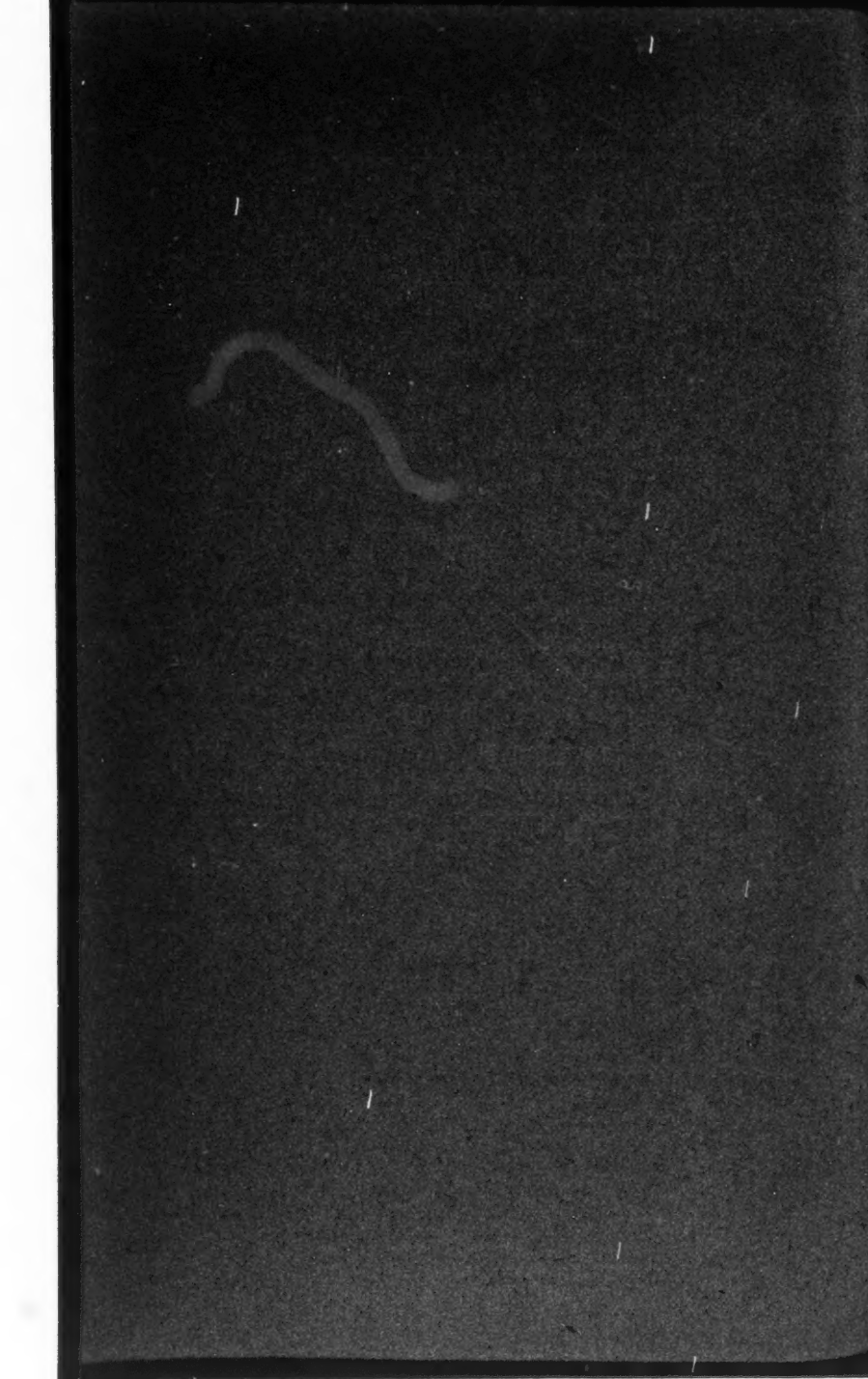
APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT.

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FILED JULY 20, 1909.

(21,266.)





(21,266.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 204.

THE SEATTLE NATIONAL BANK, APPELLANT,

vs.

R. E. DOWNIE, TRUSTEE; ST. PAUL & TACOMA LUMBER  
COMPANY, BARBER ASPHALT PAVING COMPANY,  
MUKILTEO LUMBER COMPANY, GAMWELL &  
WHEELER, BANKRUPTS, AND NATIONAL BANK OF  
COMMERCE OF SEATTLE.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT.

INDEX.

	Original.	Print.
Caption . . . . .	1	1
Transcript from the district court of the United States for the west- ern district of Washington . . . . .	2	1
Caption . . . . .	2	1
Petition of Seattle Hardware Co. <i>et al.</i> . . . . .	3	2
Answer of Gamwell & Wheeler . . . . .	7	4
Order referring matter to referee in bankruptcy, &c. . . . .	9	4
Adjudication of bankruptcy . . . . .	10	5
Order appointing receiver . . . . .	11	6
Order or decree of June 20, 1907 . . . . .	12	6
Proof of claim of Seattle National Bank . . . . .	17	8
Exhibit "A"—List of claims assigned to Seattle National Bank by Gamwell & Wheeler . . . . .	20	10
No. 1—Promissory note for \$3,200, dated Seattle, Washington, October 15, 1906, signed by Gamwell & Wheeler . . . . .	25	13

	Original.	Print
Exhibit No. 2—Promissory note for \$1,500, dated Seattle, Washington, November 20, 1906, signed by Gamwell & Wheeler .....	26	13
No. 3—Promissory note for \$8,000, dated Seattle, Washington, December 26, 1906, signed by Gamwell & Wheeler, per R. E. Downie.	27	13
No. 4—Promissory note for \$750, dated Seattle, Washington, December 17, 1906, signed by Gamwell & Wheeler.....	28	14
No. 5—Promissory note for \$1,356.78, dated Seattle, Washington, August 3, 1906, signed by Gamwell & Wheeler.....	29	14
No. 6—Promissory note for \$4,500, dated Seattle, Washington, December 24, 1906, signed by Gamwell & Wheeler, per R. E. Downie.	30	15
No. 7—Promissory note for \$1,600, dated Seattle, Washington, December 11, 1906, signed by Gamwell & Wheeler, per Arthur Gamwell .....	31	15
No. 8—Promissory note for \$4,000, dated Seattle, Washington, December 5, 1906, signed by Gamwell & Wheeler.....	32	16
No. 9—Promissory note for \$2,250, dated Seattle, Washington, September 25, 1906, signed by Gamwell & Wheeler.....	32	16
No. 10—Promissory note for \$350, dated Seattle, Washington, October 3, 1906, signed by Gamwell & Wheeler.....	33	17
No. 11—Promissory note for \$4,000, dated Seattle, Washington, December 3, 1906, signed by Gamwell & Wheeler .....	34	17
Objections of Barber Asphalt Paving Co. to allowance of preferences and securities claimed by Seattle National Bank and National Bank of Commerce.....	35	18
Objections of Mukilteo Lumber Co. to allowance of preferences and securities claimed by Seattle National Bank and National Bank of Commerce.....	38	19
Objections of St. Paul & Tacoma Lumber Co. to allowance of preferences and securities claimed by Seattle National Bank and National Bank of Commerce.....	40	20
Objections of R. E. Downie, trustee, to allowance of preferences and securities claimed by Seattle National Bank and National Bank of Commerce.....	42	21
Stipulation of facts.....	44	21
Order or decree of referee in bankruptcy, July 22, 1907.....	47	23
Order of referee in bankruptcy amending order of July 22, 1907.	50	24
Petition of Barber Asphalt Paving Co. <i>et al.</i> to referee in bankruptcy for review.....	52	25
Certificate and return of referee in bankruptcy on petition for review .....	55	26
Memorandum decision of district court as to validity of assignments of claims against the United States.....	57	27

# INDEX.

III

	Original.	Print.
Order of district court allowing claims of Seattle National Bank and National Bank of Commerce, &c.....	60	29
Petition for appeal .....	62	30
Allowance of appeal.....	63	30
Assignment of errors.....	63	30
Bond on appeal .....	66	31
Citation (copy).....	68	32
Præcipe for record .....	70	33
Clerk's certificate.....	72	34
Citation (original).....	74	35
Clerk's certificate to printed record.....	77	36
Caption, &c.....	78	37
Order of submission.....	80	38
Opinion .....	81	39
Decree.....	92	44
Order filing findings of fact and conclusions of law <i>nunc pro tunc</i> ...	93	45
Findings of fact.....	94	45
Conclusions of law.....	98	48
Petition for appeal.....	100	48
Allowance of appeal.....	101	49
Assignment of errors .....	102	49
Bond on appeal .....	105	50
Certificate of Mr. Justice Brewer.....	107	51
Clerk's certificate.....	110	53
Citation .....	112	53
Acceptance of service of citation.....	113	54



1 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1528.

THE SEATTLE NATIONAL BANK, a Creditor, Appellant,  
vs.

R. E. DOWNIE, Trustee; ST. PAUL & TACOMA LUMBER COMPANY,  
Barber Asphalt Paving Company, Mukilteo Lumber Company,  
Gamwell & Wheeler, Bankrupts, and National Bank of Com-  
merce of Seattle, Appellees.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER,  
Copartners as Gamwell & Wheeler, Bankrupts.

*Transcript of Record.*

[Printed.]

Upon Appeal from the United States District Court for the Western  
District of Washington, Northern Division.

Filed Jan. 29, 1908.

FRANK D. MONCKTON, *Clerk.*

2 In the District Court of the United States for the Western  
District of Washington, Northern Division.

In Bankruptcy. No. 3453.

In re ARTHUR GAMWELL and PHILIP WHEELER, Copartners as  
Gamwell & Wheeler, Bankrupts.

*Names and Addresses of Counsel.*

Cooley & Horan, Everett, Washington, and Peters and Powell, Dex-  
ter Horton Building, Seattle, Washington, Attorneys for St. Paul &  
Tacoma Lumber Company, Barber Asphalt Paving Company, and  
Mukilteo Lumber Company.

Bansman & Kelleher, Alaska Building, Seattle, Washington, At-  
torneys for the Seattle National Bank.

Kerr & McCord, Attorneys for R. E. Downie, Trustee, and for  
Gamwell and Wheeler, Bankrupts, Mutual Life Building, Seattle,  
Washington.

G. E. de Steiguer, New York Building, Seattle, Washington, At-  
torney for National Bank of Commerce of Seattle.

3 In the United States District Court, Western District of Washington, Northern Division.

In Bankruptcy. No. 3453.

In the Matter of the Estate of ARTHUR GAMWELL and PHILIP WHEELER, Copartners Doing Business as Gamwell & Wheeler, Bankrupts.

*Petition of Seattle Hardware Co., Barber Asphalt Paving Co., and Standard Furniture Co.*

To the Honorable C. H. Hanford, Judge of the District Court of the United States for the Western District of Washington, Northern Division:

The petition of the Seattle Hardware Company a corporation, the Barber Asphalt Paving Company, a corporation, and the Standard Furniture Company, a corporation, said corporations being domiciled in the city of Seattle, State of Washington, respectfully shows:

4 That during all the times hereinafter stated the petitioners, Seattle Hardware Company and Standard Furniture Company were each a corporation duly organized under the laws of the State of Washington; and the Barber Asphalt Paving Company was a corporation duly organized under the laws of the State of West Virginia, having places of business and general offices within the city of Seattle, State of Washington.

That Arthur Gamwell and Philip Wheeler of Seattle, Washington, have for the greater portion of six months next preceding the date of filing this petition had their principal place of business and have resided in the city of Seattle, county of King, and State aforesaid, and they owe debts to the amount of ten thousand (10,000) dollars, and over.

That your petitioners are creditors of said Gamwell & Wheeler, having provable claims amounting in the aggregate in excess of securities held by them to the sum of \$2,466.70; that the nature and amount of your petitioners' claims are as follows:

For goods, wares and merchandise sold and delivered by Barber Asphalt Paving Company to said Gamwell & Wheeler in the sum of \$2,362.50, no part of which said sum has been paid.

For goods, wares and merchandise sold and delivered by the petitioner Standard Furniture Company to said Gamwell & Wheeler in the sum of \$101.10, no part of which has been paid;

For goods, wares and merchandise sold and delivered by the petitioner Seattle Hardware Company to said Gamwell & Wheeler in the sum of \$3.10, no part of which has been paid.

5 And your petitioners further represent that the said Gamwell & Wheeler were insolvent, and within four months next preceding the date of this petition, they, the said Gamwell & Wheeler, have committed an act of bankruptcy in that they did on, to wit, the 14th day of April, 1907, admit in writing their inability to pay

their debts, and their willingness to be adjudged bankrupts on that ground.

Wherefore, your petitioners pray that service of this petition, with a subpoena, may be made on the said Gamwell & Wheeler as provided in the acts of Congress relating to bankruptcy, and that they may be adjudged by the Court to be bankrupts within the purview of said acts.

SEATTLE HARDWARE COMPANY,  
By BAUSMAN & KELLEHER, *Its —.*

STANDARD FURNITURE COMPANY,  
By BAUSMAN & KELLEHER, *Its —.*

BARBER ASPHALT PAVING  
COMPANY,  
By PETERS & POWELL, *Its —.*

COOLEY & HORAN,  
BAUSMAN & KELLEHER,  
PETERS & POWELL,  
*Attorneys for Petitioners.*

6 UNITED STATES OF AMERICA,  
*Western District of Washington, Northern Division, ss:*

Daniel Kelleher, one of the attorneys for the Seattle Hardware Company and Standard Furniture Company, and W. A. Peters, one of the attorneys for the Barber Asphalt Paving Company, the petitioners hereinabove named, each being first duly sworn, doth make solemn oath that the statements contained in the foregoing petition subscribed by them, said petitioners, are true; that they are the attorneys and agents of the respective petitioners, and the source of their information as to the truth of said statements is from information furnished them by their respective clients, and by the admission of Arthur Gamwell, one of the copartners of Gamwell & Wheeler.

W. A. PETERS.  
DAN'L KELLEHER.

Subscribed and sworn to before me this 16th day of April, A. D. 1907.

[SEAL.]

MARION EDWARDS,  
*Notary Public in and for the State of  
Washington, Residing at Seattle.*

7 [Endorsed:] Petition of Seattle Hardware Company,  
Ainsworth & Dunn, and Barber Asphalt Paving Company.  
Filed in the U. S. District Court, Western Dist. of Washington,  
12:10 P. M. Apr. 16, 1907. R. M. Hopkins, Clerk.



In the United States District Court, Western District of Washington,  
Northern Division.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER, Copartners Doing Business under the Firm Name and Style of Gamwell & Wheeler, Bankrupts.

*Answer of Arthur Gamwell and Philip Wheeler to Petition.*

Come now Arthur Gamwell and Philip Wheeler, copartners doing business under the firm name and style of Gamwell & Wheeler, the bankrupts above named, and answering the petition of the petitioning creditor for cause of answer says:

I.

They admit that the firm of Gamwell & Wheeler is insolvent and unable to meet its obligations and consent to adjudication in bankruptcy.

KERR & McCORD,  
*Attorneys for Bankrupts.*

8 STATE OF WASHINGTON,  
*County of King, ss:*

Arthur Gamwell, being first duly sworn, deposes and says: That he is a member of the firm of Gamwell & Wheeler, the above-mentioned bankrupts; that he has read the foregoing answer, knows the contents thereof and believes the same to be true

ARTHUR GAMWELL.

Subscribed and sworn to before me this 16th day of April, 1907.  
[SEAL.] E. S. McCORD.

*Notary Public in and for the State of  
Washington, Residing at Seattle.*

[Endorsed:] Answer. Filed in the U. S. District Court, Western Dist. of Washington, Apr. 16, 1907, 12:10 P. M. R. M. Hopkins, Clerk.

In the United States District Court, Western District of Washington,  
Northern Division.

In Bankruptcy. No. 3453.

In the Matter of the Estate of ARTHUR GAMWELL and PHILIP WHEELER, Copartners Doing Business as Gamwell & Wheeler, Bankrupts.

9 *Order Referring Matter to Referee in Bankruptcy, etc.*

Whereas, on the 16th day of April, A. D. 1907, a petition was filed to have Gamwell & Wheeler, of Seattle, King County, District

aforesaid, adjudged bankrupts according to the provisions of the acts of Congress relating to bankrupts; and

Whereas said bankrupts have filed an answer herein admitting the petition of said petitioners; and,

Whereas, the Judge of said court was absent from this division of said district at the time of filing said petition and answer—

It is thereupon ordered that the said matter be referred to Honorable J. P. Hoyt, one of the referees in bankruptcy, in this court, to consider said petition and take such proceedings therein as are required by said acts, and that the said Gamwell & Wheeler shall attend before said referee on the 23d day of April, 1907, at the office of said referee.

Witness my hand and the seal of said court at Seattle in said district on the 16th day of April, A. D. 1907.

[SEAL.]

R. M. HOPKINS, *Clerk.*

[Endorsed:] Order of Reference. Filed in the U. S. District Court, Western District of Washington, 12:30 P. M. Apr. 16, 1907. R. M. Hopkins, Clerk.

10 In the United States District Court, Western District of Washington, Northern Division.

In Bankruptcy. No. 3453.

In the Matter of the Estate of ARTHUR GAMWELL and PHILIP WHEELER, Copartners Doing Business as Gamwell & Wheeler, Bankrupts.

*Adjudication of Bankruptcy.*

At Seattle, in said District, on the 16th day of April, A. D. 1907, before the Honorable C. H. Hanford, Judge of said court in bankruptcy, the petition of the Seattle Hardware Company, a corporation, Standard Furniture Company, a corporation, and the Barber Asphalt Paving Company, a corporation, that Arthur Gamwell and Philip Wheeler, copartners doing business as Gamwell & Wheeler, be adjudged bankrupts within the true intent and meaning of the acts of Congress relating to bankruptcy, and the said Gamwell & Wheeler, having filed herein their verified answer, admitting the allegations of said petition, and the said matter having been heard and duly considered, the said Arthur Gamwell and Philip Wheeler, copartners doing business as Gamwell & Wheeler, are hereby declared and adjudged bankrupts accordingly.

11 Witness the Honorable C. H. Hanford, Judge of said court, and the seal thereof, at Seattle, in said District, on the 16th day of April, A. D. 1907.

JOHN P. HOYT, *Referee.*

[Endorsed:] Adjudication of Bankruptcy. Filed April 16th, 1907, 1 P. M. John P. Hoyt, Referee.

In the United States District Court, Western District of Washington,  
Northern Division.

In Bankruptcy. No. 3453.

In the Matter of the Estate of ARTHUR GAMWELL and PHILIP  
WHEELER, Copartners Doing Business as Gamwell & Wheeler,  
Bankrupts.

*Order Appointing Receiver.*

This matter coming on to be heard upon the application of the  
Seattle Hardware Company, a corporation, Standard Furniture Com-  
pany, a corporation, and the Barber Asphalt Paving Company, a  
corporation, petitioners, for the appointment of a receiver of the  
goods, effects and business of the bankrupts Gamwell & Wheeler,  
both partnership and individual, the said Gamwell & Wheeler, ap-  
pearing herein and consenting, and it appearing to the Court  
12 that the appointment of such receiver is absolutely necessary  
to preserve the property and protect and care for the business  
of said bankrupts pending the appointment and qualification of a  
trustee herein,

Now it is ordered, that Ralph E. Downie, of the city of Seattle  
be and he is hereby appointed such receiver upon filing a bond herein  
in the sum of one thousand dollars, conditioned according to law.

Done in open court this 16th day of April, A. D. 1907.

JOHN P. HOYT, *Referee.*

[Endorsed:] Order Appointing Receiver. Filed April 16th,  
1907, 1:20 P. M. John P. Hoyt, Referee.

In the United States District Court for the Western District of  
Washington, Northern Division.

No. 3453.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER, Copart-  
ners Doing Business under the Firm Name of Gamwell & Wheeler,  
Bankrupts.

*Order or Decree of District Court.*

This cause coming on to be heard this the 20th day of June, A. D.  
1907, Kerr & McCord appearing for R. E. Downie, as temporary  
receiver of the estate of Gamwell & Wheeler and as tempo-  
13 rary receiver of the estate of Arthur Gamwell, bankrupts  
above-named, and as permanent trustee of the estate of Gam-  
well & Wheeler and of Arthur Gamwell, bankrupts, and it appearing  
to the Court that on the 16th day of April, A. D. 1907, the said  
R. E. Downie was duly appointed temporary Receiver of the estate  
of Gamwell & Wheeler and of Arthur Gamwell, by the Honorable

John P. Hoyt, Referee in Bankruptcy in the above district and duly qualified as such temporary Receiver and entered upon his duties as such Receiver; and it further appearing that on the 4th day of June, A. D. 1907, the said R. E. Downie was duly and regularly elected and appointed as permanent trustee in bankruptcy for the estate of Gamwell & Wheeler and for the estate of Arthur Gamwell, by the Honorable John P. Hoyt, Referee in Bankruptcy as aforesaid, and that he has duly qualified and entered upon his duties as such permanent trustee in bankruptcy; and it further appearing that on the 21st day of May, 1907, the said R. E. Downie as Receiver of Gamwell & Wheeler was directed by the said Hon. John P. Hoyt, referee in Bankruptcy, to execute to the Quartermaster's Department of the United States Army at Seattle, Washington, all receipts and vouchers requisite and necessary in order to secure payment to him as such receiver of \$5,140.56 from the Quartermaster's Department of the

United States Army; and it further appearing that the said  
14 R. E. Downie is the proper person, as permanent Trustee in Bankruptcy of the estate of Gamwell & Wheeler and of the estate of Arthur Gamwell to collect all moneys now due or hereafter to become due from the United States Government and the various departments of said Government to the said Gamwell & Wheeler and to the said Arthur Gamwell, and that he is the proper person to execute receipts and vouchers therefor and that he is the proper person to receive from the officers of the United States Government any and all sums now due or hereafter to become due from the Government of the United States to the said Gamwell & Wheeler and the said Arthur Gamwell.

Wherefore, by reason of the law and the premises it is by the Court ordered, adjudged and decreed;

First. That the order entered in the above-entitled cause by the Honorable John P. Hoyt, Referee in Bankruptcy for the above-named District and Court on the 16th day of April, A. D. 1907, by the terms of which order the said R. E. Downie was appointed temporary receiver of the estate of Gamwell & Wheeler, bankrupts, and of the estate of Arthur Gamwell, Bankrupt, be and the same is hereby confirmed and approved and the execution by the said R. E. Downie  
as temporary Receiver of any and all receipts and vouchers to  
15 the Government of the United States and to any of the departments thereof is further confirmed, ratified and approved.

Second. It is further ordered, adjudged and decreed that the order entered in the above-entitled cause on the 4th day of June A. D. 1907, by the Honorable John P. Hoyt, Referee in Bankruptcy, for said District appointing the said R. E. Downie as permanent receiver of the estate of Gamwell & Wheeler, and of the estate of Arthur Gamwell, bankrupts, be and the same is hereby ratified and approved.

Third. It is further ordered, adjudged and decreed that R. E. Downie as Trustee of the estate of Gamwell & Wheeler, bankrupts and as trustee of the estate of Arthur Gamwell, bankrupt, be and he is hereby authorized, empowered and directed to collect from the United States Government, and from the various

departments thereof, all sums of money now due or owing, or hereafter to become due and owing from the United States Government or from any of the departments thereof, to the said Gamwell & Wheeler or to the said Arthur Gamwell and he is authorized and directed to execute to the said United States Government or the various departments thereof, or to the officers of the United States Government any and all receipts and vouchers required by the

16 said Government, and the action of the said R. E. Downie, as such Trustee, in the execution of all receipts and vouchers for money paid him by said Government, or its officers, shall have the same force and effect, as though payment had been made and receipts and vouchers executed by the said Gamwell & Wheeler or by the said Arthur Gamwell, respectively, prior to the date of their adjudication in bankruptcy by this court on the 16th day of April, A. D. 1907; and it is further ordered that payment made by the Government of the United States or any of its officers, through any of its departments or otherwise, shall constitute a full and complete payment of all sums so paid on account of the said Gamwell & Wheeler or of the said Arthur Gamwell, and the Government of the United States, by such payment, shall be relieved and discharged and freed from any further liability on account of the sums so paid.

Fourth. It is further particularly ordered that the execution by the said R. E. Downie, as temporary Receiver, of a receipt and voucher for the sum of \$5,140.56 to the Quartermaster's Department of the United States Army for supplies furnished by Gamwell & Wheeler to the said Quartermaster's Department at Seattle,

17 Washington, be and the same is hereby approved.

C. H. HANFORD, *Judge*.

[Endorsed:] Order. Filed in the U. S. District Court, Western Dis. of Washington,, June 20, 1907, 2 P. M. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3453.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER, Copartners Doing Business under the Firm Name of Gamwell & Wheeler. Bankrupts.

*Proof of Claim of Seattle National Bank Against Gamwell & Wheeler.*

At Seattle, Washington, in said Western District of Washington, on the 18th day of June, 1907, came S. Foster Kelley, of Seattle, County of King, and State of Washington, and made oath and says:

That he is the cashier of the Seattle National Bank, a corporation incorporated by and under the laws of the United States and carrying on business at Seattle in the county of King, State of Washington and that he is duly authorized to make this proof; and

18 says that the firm of Gamwell & Wheeler, the persons against

whom petition for adjudication has been filed, were at and before the filing of said petition, and still are, justly and truly indebted to this bank in the sum of \$22,582.19, together with interest on \$22,516.31 at the rate of 8 per cent per annum from the dates of the respective notes representing said indebtedness, until paid, a copy of which said notes is hereto attached and marked "Exhibits 1" to "11," inclusive. That the consideration of said debt is an overdraft existing at said bank in the sum of \$65.88 at the time of said adjudication and promissory notes, on which there is due \$22,516.31 and interest as aforesaid, giving from time to time by said firm to said bank corporation, copies of which said notes are hereto attached, and which notes were given for loans made by said bank to said copartners at the dates of the respective notes; that no part of said notes has been paid, excepting that on note No. 1, \$920.36 was paid March 27, 1907; on note No. 3, \$1161.13 was paid April 13, 1907; on note No. 5, \$150.00 was paid September 14, 1906; \$86.86 paid October 5, 1906; \$104.88 paid November 14, 1906; \$114.45 January 21, 1907; that on note No. 6, \$2488.24 was paid March 27, 1907 and \$345.47 paid April 13, 1907; and on note No. 7, \$315.38 was paid March 27, 1907 and \$203.70 paid April 13, 1907; that there are no offsets or

19 counter-claims to the same; that the only securities held by this bank for said debt are claims assigned by said bankrupts against the Government of the United States, which claims arose on account of the selling of goods by said bankrupts to the different departments of the United States Government, and the claims of said bankrupts against the United States Government arising out of said sales were assigned as collateral security for the above indebtedness to said bank corporation; also two certain claims against the Raymond Foundry & Machine Company of \$339.14 and \$1017.64 respectively, which arose out of claims assigned by said bankrupts to this bank corporation on account of goods sold to said Raymond Foundry & Machine Company. A detail list of said claims showing the number of the contract between said bankrupts and the United States Government, the place where the goods were shipped, the date of the invoice, the kind of material and the amount, is hereto attached and marked "Exhibit A."

S. FOSTER KELLEY,

*As Cashier of the Seattle National Bank, Creditor.*

Subscribed and sworn to before me this 18th day of June, 1907.

DAN KELLEHER,

*Notary Public in and for the State  
of Washington, Residing at Seattle.*

## 20 EXHIBIT "A" TO PROOF OF CLAIM OF SEATTLE NATIONAL BANK AGAINST GAMWELL &amp; WHEELER.

Con. No.	Where shipped.	Date of inv.	Kind of material.	Amount.
	Gen'l Storekeeper N. Y. Mare Island.	Dec. 3, 1906.	1200 Oak Pipe Staves.....	1008.00
	Quartermaster U. S. A., San Francisco.	Dec. 3, 1906.	38 Cavalry Horses.....	4826.00
1886	Gen'l Storekeeper, N. Y. P. S.	Sept. 28, 1906.	23900 lbs. Sand.....	418.25
19	Q. M. U. S. A., Manila.	Sept. 25, 1906.	Fir .....	2497.55
7592	Depot, Q. M., San Fran.	Dec. 10, 1906.	Stocks & Dies Duplex.....	258.00
687	& Gen'l Storekeeper Bremerton.	Dec. 8, 1906.	Fir Lumber .....	178.44
2522	Gen'l Storekeeper, Mare Is.	Nov. 12, 1906.	Hickory .....	391.04
138	Gen'l Storekeeper, P. S. N. Y.	Dec. 11, 1906.	Fir Lumber .....	449.34
	Gen'l Storekeeper, P. S. N. Y.	Dec. 8, 1906.	Fir Lumber .....	173.92
2177	Gen'l Storekeeper, P. S. N. Y.	Dec. 8, 1906.	Miscellaneous Items.....	354.20
21				
2390	Gen'l Storekeeper, N. Y., Mare Is.	Nov. 20, 1906.	Spars .....	2036.70
2776	Gen'l Storekeeper, N. Y., Mare Is.	Nov. 20, 1906.	Ship-plank, spars, etc.....	3650.00
2001	Gen'l Storekeeper, N. Y., Mare Is.	Dec. 14, 1906.	Oregon Pine .....	9007.02
2522	Gen'l Storekeeper, N. Y., Mare Is.	Dec. 14, 1906.	Oregon Pine .....	5229.14
2776	Gen'l Storekeeper, Puget So.	Nov. 20, 1906.	Sugar Pine .....	809.75
	Raymond Fdry. & Mch. Co.	Aug. 2, 1906.	Miscellaneous Hdw. ....	339.14
6	Raymond Fdry. & Mch. Co.			
	mond, Wash.	Jul. 28, 1906.	Miscellaneous Hdw. ....	1017.64
2983	Gen'l Storekeeper, N. Y. P. S.	Mch. 15, 1907.	Miscellaneous Tools .....	112.98
	Gen'l Storekeeper, N. Y. P. S.	Feb. 21, 1907.	Miscellaneous Hdw. ....	36.06
2522	Gen'l Storekeeper, N. Y. P. S.	Feb. 25, 1907.	Brass .....	86.11
22				
71	Gen'l Storekeeper, N. Y. P. S.	Dec. 15, 1906.	Plumbers' Tools .....	15.60
71	Gen'l Storekeeper, N. Y. P. S.	Feb. 18, 1907.	Misc. Hdw. ....	24.57

71	Gen'l Storekeeper,	N.	Y.	P.	S.	Jan. 24, 1907.	Calipers .....	49.51
71	Gen'l Storekeeper,	N.	Y.	P.	S.	Feb. 7, 1907.	Hose and coupling.	41.10
71	Gen'l Storekeeper,	N.	Y.	P.	S.	Jan. 24, 1907.	Tools .....	127.80
71	Gen'l Storekeeper,	N.	Y.	P.	S.	Dec. 27, 1906.	Wrenches, pipe .....	136.02
2177	Gen'l Storekeeper,	N.	Y.	P.	S.	Dec. 27, 1906.	Gum-Gutta Pehcha .....	118.50
2177	Gen'l Storekeeper,	N.	Y.	P.	S.	Dec. 29, 1906.	Milling tools .....	108.00
2177	Gen'l Storekeeper,	N.	Y.	P.	S.	Feb. 27, 1907.	Tools .....	41.60
2177	Gen'l Storekeeper,	N.	Y.	P.	S.	Feb. 27, 1907.	Tools .....	14.28
2177	Gen'l Storekeeper,	N.	Y.	P.	S.	Feb. 11, 1907.	Jacks, Hydraulic .....	479.34
2177	Gen'l Storekeeper,	N.	Y.	P.	S.	Mar. 4, 1907.	Tools .....	226.33
2177	Gen'l Storekeeper,	N.	Y.	P.	S.	Dec. 15, 1906.	Wire steel .....	3.25
71	Gen'l Storekeeper,	N.	Y.	P.	S.	Apr. 4, 1907.	75 lbs Wire .....	30.00
71	Gen'l Storekeeper,	N.	Y.	P.	S.	Dec. 17, 1906.	Tools .....	51.90
71	Gen'l Storekeeper,	N.	Y.	P.	S.	Dec. 17, 1906.	Tools .....	18.00
71	Gen'l Storekeeper,	N.	Y.	P.	S.	Dec. 19, 1906.	Tools .....	32.40
71	Gen'l Storekeeper,	N.	Y.	P.	S.	Feb. 21, 1907.	Tools .....	17.50
71	Gen'l Storekeeper,	N.	Y.	P.	S.	Dec. 31, 1906.	Wrenches .....	10.20
71	Gen'l Storekeeper,	N.	Y.	P.	S.	Feb. 21, 1907.	Gauge testing outfit .....	80.00
71	Gen'l Storekeeper,	N.	Y.	P.	S.	Dec. 17, 1906.	Door mats .....	110.40
71	Gen'l Storekeeper,	N.	Y.	P.	S.	Mar. 16, 1907.	Rivets .....	13.35
71	Gen'l Storekeeper,	N.	Y.	P.	S.	Mar. 1, 1907.	Calipers .....	19.46
2001	Gen'l Storekeeper,	N.	Y.	P.	S.	Feb. 26, 1907.	Oregon Pine .....	489.04
71	General Storekeeper,	Puget	So.			Feb. 13, 1907.	Tools .....	20.40
71	General Storekeeper,	Puget	So.			Jan. 13, 1907.	Drill press, bench .....	12.50
71	General Storekeeper,	Puget	So.			Jan. 3, 1907.	Misc. tools .....	8.45
71	General Storekeeper,	Puget	So.			Feb. 27, 1907.	Misc. tools .....	13.37
71	General Storekeeper,	Puget	So.			Feb. 16, 1907.	Misc. tools .....	15.78
76	General Storekeeper,	Puget	So.			Mar. 15, 1907.	25 lbs. aluminum pt. ....	8.75



## Exhibit "A" to Proof of Claim of Seattle National Bank Against Gamwell &amp; Wheeler.—Continued.

Con. No.	Where shipped.	Date of inv.	Kind of material.	Amount.
24				
76	General Storekeeper, Puget So.	Nov. 21, 1906.	Miscellaneous	8.00
76	General Storekeeper, Puget So.	Nov. 3, 1906.	Miscellaneous	21.00
2522	Gen'l Storekeeper, Mare Is.	Mar. 20, 1907.	Threads	52.75
2522	Gen'l Storekeeper, Mare Is.	Feb. 25, 1907.	Oregon Pine	306.96
2776	Gen'l Storekeeper, Mare Is.	Feb. 25, 1907.	Oregon Pine	435.45
2522	Gen'l Storekeeper, Puget So.	Jan. 10, 1907.	Brass screws	11.84
2776	Gen'l Storekeeper, Puget So.	Mar. 18, 1907.	Hose & Washers	1051.80
2776	Gen'l Storekeeper, Mare Is.	Dec. 27, 1906.	Calipers	89.60
2776	Gen'l Storekeeper, Puget So.	Jan. 29, 1907.	Sort Oxford Cedar	534.00
2776	Gen'l Storekeeper, Puget So.	Jan. 10, 1907.	15 Hose pipe	102.25
2983	Gen'l Storekeeper, Puget So.	Mar. 29, 1907.	150 ft. Water hose	49.50
2776	Gen'l Storekeeper, Mare Is.	Apr. 1, 1907.	900 pipe staves	756.00
2001	Gen'l Storekeeper.	Oct. 30, 1906.	Bar iron	1230.27
				<hr/>
				\$39866.10

25 *Exhibit No. 1 to Proof of Claim of Seattle National Bank  
Against Gamwell & Wheeler.*

\$3200.00.

SEATTLE, WASHINGTON, Oct. 15, 1906.

On demand after date, for value received. I promise to pay to the order of The Seattle National Bank, at the Banking House of said Bank the sum of Thirty-two Hundred Dollars with interest at the rate of 8 per cent per annum from date until paid principal and interest payable in U. S. Gold Coin. For value received each and every party signing or endorsing this note hereby waives presentment, demand, protest and notice of non-payment thereof, binds himself thereon as a principal, not as a surety and promises in case suit is instituted to collect the same or any portion thereof to pay such additional sum as the Court may adjudge reasonable as attorney's fees in such suit.

GAMWELL & WHEELER.

Due ———,

No. ———,

P. O. Address, ———.

(Endorsed on back:) 920.36 Prin. pd. Mar. 27, 1907.

26 *Exhibit No. 2 to Proof of Claim of Seattle National Bank  
Against Gamwell & Wheeler.*

\$1500.00.

SEATTLE, WASHINGTON, Nov. 20, 1906.

On demand after date, for value received. I promise to pay to the order of The Seattle National Bank, at the Banking House of said bank the sum of Fifteen Hundred Dollars with interest at the rate of 8 per cent per annum from date until paid principal and interest payable in U. S. Gold Coin. For value received each and every party signing or endorsing this note hereby waives presentment, demand, protest and notice of non-payment thereof, binds himself thereon as a principal, not as a surety, and promises in case suit is instituted to collect the same or any portion thereof to pay such additional sum as the Court may adjudge reasonable as attorney's fees in such suit.

GAMWELL & WHEELER.

Due ———,

No. ———,

P. O. Address, ———.

27 *Exhibit No. 3 to Proof of Claim of Seattle National Bank  
Against Gamwell & Wheeler.*

\$8000.00.

SEATTLE, WASHINGTON, Dec. 26, 1906.

On demand after date for value received. I promise to pay to the order of the Seattle National Bank, at the Banking House of said Bank the sum of Eight Thousand Dollars with interest at the rate of

8 per cent per annum from date until paid, principal and interest payable in U. S. Gold Coin. For value received each and every party signing or endorsing this note, hereby waives presentment, demand, protest and notice of non-payment thereof, binds himself thereon as a principal, not as a surety, and promises in case suit is instituted to collect the same or any portion thereof to pay such additional sum as the Court may adjudge reasonable as attorney's fees in such suit.

GAMWELL & WHEELER,  
Per R. E. DOWNIE.

Due ———,  
No. ———,  
P. O. Address ———.

(Endorsed on back:) 1161.13 Prin pd. Apr. 13, 1907.

28 *Exhibit No. 4 to Proof of Claim of Seattle National Bank  
Against Gamwell & Wheeler.*

\$750.00.

SEATTLE, WASHINGTON, Dec. 17, 1906.

On demand after date, for value received. I promise to pay to the order of The Seattle National Bank, at the Banking House of said Bank the sum of Seven Hundred Fifty Dollars with interest at the rate of 8 per cent per annum from date until paid, principal and interest payable in U. S. Gold Coin. For value received each and every party signing or endorsing this note hereby waives presentment, demand, protest and notice of non-payment thereof, binds himself thereon as a principal, not as a surety, and promises in case suit is instituted to collect the same or any portion thereof to pay such additional sum as the Court may adjudge reasonable as attorney's fees in such suit.

GAMWELL & WHEELER.

Due ———,  
No. ———,  
P. O. Address ———.

29 *Exhibit No. 5 to Proof of Claim of Seattle National Bank  
Against Gamwell & Wheeler.*

\$1356.78.

SEATTLE, WASHINGTON, Aug. 3, 1906.

On demand after date for value received. I promise to pay to the order of The Seattle National Bank, at the Banking House of said Bank, the sum of One Thousand Three Hundred and Fifty-six and 78/100 Dollars, with interest at the rate of 8 per cent per annum from date until paid, principal and interest payable in U. S. Gold Coin. For value received, each and every party signing or endorsing this note hereby waives presentment, demand, protest and notice of non-payment thereof, binds himself thereon as a principal, not as a surety, and promises in case suit is instituted to collect the

same or any portion thereof to pay such additional sum as the Court may adjudge reasonable as attorney's fees in such suit.

GAMWELL & WHEELER.

Due —.

No. —.

P. O. Address, —.

(Endorsed on back:) 150. Prin pd. Sept. 14, 1906. 86.86 Prin. pd. Oct. 5, 1906. 104.88 Prin. pd. Nov. 14, 1906. 114.45 Prin. pd. Jan. 21, 1907.

30 *Exhibit No. 6 to Proof of Claim of Seattle National Bank Against Gamwell & Wheeler.*

\$4500.00.

SEATTLE, WASHINGTON, December 24, 1906.

On demand after date for value received. I promise to pay to the order of The Seattle National Bank, at the Banking House of said Bank, the sum of Forty-five Hundred Dollars, with interest at the rate of 8 per cent per annum from date until paid, principal and interest payable in U. S. Gold Coin. For value received, each and every party signing or endorsing this note hereby waives presentment, demand, protest and notice of non-payment thereof, binds himself thereon as a principal, not as a surety, and promises in case suit is instituted to collect the same or any portion thereof to pay such additional sum as the Court may adjudge reasonable attorney's fees in such suit.

GAMWELL & WHEELER,  
Per R. E. DOWNIE.

Due —.

No. —.

P. O. Address, —.

(Endorsed on back:) 2488.24 Prin. pd. Mar. 27, 1907. 345.47 Prin. pd. Apr. 13, 1907.

31 *Exhibit No. 7 to Proof of Claim of Seattle National Bank Against Gamwell & Wheeler.*

\$1600.00.

SEATTLE, WASHINGTON, Dec. 11, 1906.

On demand after date for value received. I promise to pay to the order of The Seattle National Bank, at the Banking House of said Bank, the sum of Sixteen Hundred Dollars, with interest at the rate of 8 per cent from date until paid, principal and interest payable in U. S. Gold Coin. For value received, each and every party signing or endorsing this note hereby waives presentment, demand, protest and notice of non-payment thereof, binds himself thereon as a principal, not as a surety, and promises in case suit is instituted to collect the same or any portion thereof to pay such additional

sum as the Court may adjudge reasonable as attorney's fees in such suit.

GAMWELL & WHEELER,  
By ARTHUR GAMWELL.

Due —.

No. —.

P. O. Address, —.

(Endorsed on back:) 315.38 Prin. pd. Mar. 27, 1907. 203.70  
Prin. pd. Apr. 13, 1907.

32 *Exhibit No. 8 to Proof of Claim of Seattle National Bank  
Against Gamwell & Wheeler.*

\$900.00.

SEATTLE, WASHINGTON, Dec. 3, 1906.

On demand after date for value received. I promise to pay to the order of The Seattle National Bank, at the Banking House of said Bank the sum of Nine Hundred Dollars, with interest at the rate of 8 per cent per annum from date until paid, principal and interest payable in U. S. Gold Coin. For value received each and every party signing or endorsing this note hereby waives presentment, demand protest and notice of non-payment thereof, binds himself thereon as a principal, not as a surety, and promises in case suit is instituted to collect the same or any portion thereof, to pay such additional sum as the Court may adjudge reasonable as attorney's fees in such suit.

GAMWELL & WHEELER.

Due —.

No. —.

P. O. Address, —.

*Exhibit No. 9 to Proof of Claim of Seattle National Bank Against  
Gamwell & Wheeler.*

\$2250.00.

SEATTLE, WASHINGTON, Sept. 25, 1906.

33 On demand, after date, for value received. I promise to pay to the order of The Seattle National Bank, at the Banking House of said Bank, the sum of twenty-two Hundred Fifty Dollars, with interest at the rate of 8 per cent per annum from date until paid, principal and interest payable in U. S. Gold Coin. For value received each and every party signing or endorsing this note hereby waives presentment, demand, protest and notice of non-payment thereof, binds himself thereon as a principal, not as a surety, and promises in case suit is instituted to collect the same, or any portion thereof, to pay such additional sum as the Court may adjudge reasonable as attorney's fees in such suit.

GAMWELL & WHEELER.

Due —.

No. —.

P. O. Address, —.

*Exhibit No. 10 to Proof of Claim of Seattle National Bank Against Gamwell & Wheeler.*

\$350.00.

SEATTLE, WASHINGTON, Oct. 3, 1906.

On demand, after date, for value received. I promise to pay to the order of The Seattle National Bank, at the Banking House of said Bank, the sum of Three Hundred and Fifty Dollars, with interest at the rate of 8 per cent. per annum from date until paid, principal and interest payable in U. S. Gold Coin. For value received each and every party signing or endorsing this note hereby waives presentment, demand, protest and notice of non-payment thereof, binds himself thereon as a principal, not as a surety, and promises in case suit is instituted to collect the same, or any portion thereof, to pay such additional sum as the Court may adjudge reasonable as attorney's fees in such suit.

GAMWELL &amp; WHEELER.

Due \_\_\_\_.

No. \_\_\_\_.

P. O. Address, \_\_\_\_.

*Exhibit No. 11 to Proof of Claim of Seattle National Bank Against Gamwell & Wheeler.*

\$4000.00.

SEATTLE, WASHINGTON, Dec. 3, 1906.

On demand, after date, for value received, I promise to pay to the order of The Seattle National Bank, at the Banking House of said Bank, the sum of Four Thousand Dollars, with interest at the rate of 8 per cent per annum from date until paid, principal and interest payable in U. S. Gold Coin. For value received each and every party signing or endorsing this note hereby waives presentment, demand, protest and notice of non-payment thereof, binds himself thereon as a principal, not as a surety, and promises in case suit is instituted to collect the same, or any portion thereof, to pay such additional sum as the Court may adjudge reasonable as attorney's fees in such suit.

GAMWELL &amp; WHEELER.

Due \_\_\_\_.

No. \_\_\_\_.

P. O. Address, \_\_\_\_.

[Endorsed:] Proof of Claim of Seattle National Bank Against Gamwell & Wheeler. Filed June 18th, 1907, 2 P. M. John P. Hoyt, Referee.

In the United States District Court for the Western District of Washington, Northern Division.

**In Bankruptcy.**

In the Matter of the Estate of GAMWELL & WHEELER, Bankrupts.

*Objections of Barber Asphalt Paving Co. to Allowance of Preferences and Securities Claimed by Seattle National Bank and National Bank of Commerce.*

Comes now the Barber Asphalt Paving Company, and respectfully alleges as follows, to wit:

That it is one of the general creditors of Arthur Gamwell and Philip Wheeler, copartners as Gamwell & Wheeler, bankrupts, and which has filed its claim herein against such bankrupts;

That the Seattle National Bank and the National Bank of Commerce have filed certain claims herein against these bankrupts, and together therewith have filed certain claims against the United States Government for goods, wares and merchandise sold and delivered by Arthur Gamwell, and by Gamwell & Wheeler to the said United States Government, which accounts against said Government, and the payment therefor, are claimed by the said bankrupts respectively to have been assigned by the said Gamwell & Wheeler to said banks as collateral security for moneys alleged to have been advanced by said banks respectively to Arthur Gamwell and to Gamwell & Wheeler.

That the Barber Asphalt Paving Company objects and excepts to the allowance of these securities, or any of them, on the ground that the assignments thereof are invalid, and that said claims against the Government belong to the creditors generally of said bankrupts, for the following reasons and grounds, to wit:

1. For the reason that said assignments were all and each of them without any consideration whatsoever.

2. For the reason that they were in violation of section 60 of the Bankrupt Act of the United States for the year of 1898 as amended by the Act of Congress of date February 3, 1903.

3. Because in contravention of section 3477, Revised Statutes of the United States, and sec. 3737, Revised Statutes of the United States.

These exceptions and objections are made on behalf of itself and of all other general creditors herein or who desire to join therein and to share their proportion of the costs attendant thereon.

COOLEY & HORAN,  
PETERS & POWELL,

*Attorneys for Barber Asphalt Paving Company.*

Service of within objections and receipt of copy thereof admitted this 1st day of July, 1907.

G. E. DE STEIGUER,  
*Attorney for National Bank of Commerce.*

[Endorsed:] Objections of Barber Asphalt Paving Co. to Allow-ing Preferences and Securities Claimed by Seattle Nat'l Bank and Nat'l Bank of Commerce. Filed as of July 10th, 1907, 2 P. M. John P. Hoyt, Referee.

38 In the United States District Court for the Western District of Washington, Northern Division.

### In Bankruptcy.

In the Matter of the Estate of GAMWELL & WHEELER, Bankrupts.

*Objections of Mukilteo Lumber Co. to Allowance of Preferences and Securities Claimed by Seattle National Bank and National Bank of Commerce.*

Comes now the Mukilteo Lumber Company and respectfully alleges as follows, to wit:

That it is one of the general creditors of Arthur Gamwell and Philip Wheeler, copartners as Gamwell & Wheeler, bankrupts, and which has filed its claim herein against such bankrupts.

That the Seattle National Bank and the National Bank of Commerce have filed certain claims herein against these bankrupts, and together therewith have filed certain claims against the United States Government for goods, wares and merchandise sold and delivered by Arthur Gamwell, and by Gamwell & Wheeler to the said United States Government, which accounts against said Government, and

38 the payment therefor, are claimed by the said bankrupts respectively to have been assigned by *the* Gamwell & Wheeler to said banks as collateral security for moneys alleged to have been advanced by said banks respectively to Arthur Gamwell and to Gamwell & Wheeler.

That the Mukilteo Lumber Company objects and excepts to the allowance of these assigned securities, or of any of them, on the ground that the assignments thereof are invalid, and that said claims against the Government belong to the creditors generally of said bankrupts, for the following reasons and grounds, to wit:

1. For the reason that said assignments were all and each of them without any consideration whatsoever.

2. For the reason that they were in violation of section 60 of the Bankrupt Act of the United States for the year 1898 as amended by the Act of Congress of date February 3d, 1903.

3. Because in contravention of section 3477, Revised Statutes of the United States, and section 3737, Revised Statutes of the United States.

These exceptions and objections are made on behalf of itself and of all other general creditors herein, or who desire to join therein and to share their proportion of the costs attendant thereon.

COOLEY & HORAN,

*Attorneys for the Mukilteo Lumber Company.*

[Endorsed:] Objections. Filed July 10th, 1907, 2 P. M. John P. Hoyt, Referee.



40 In the United States District Court for the Western District of Washington, Northern Division.

In Bankruptcy.

In the Matter of the Estate of GAMWELL & WHEELER, Bankrupts.

*Objections of St. Paul & Tacoma Lumber Co. to Allowance of Preferences and Securities Claimed by Seattle National Bank and National Bank of Commerce.*

Comes now the St. Paul and Tacoma Lumber Company, and respectfully alleges as follows:

That it is one of the general creditors of Arthur Gamwell and Philip Wheeler, copartners as Gamwell & Wheeler, bankrupts, and which has filed its claim herein against such bankrupts;

That the Seattle National Bank and the National Bank of Commerce have filed certain claims herein against these bankrupts and together therewith have filed certain claims against the United States Government for goods, wares and merchandise sold and delivered by Arthur Gamwell and by Gamwell and Wheeler to the said United States Government, which accounts against said Government and payment thereof are claimed by the said banks respectively to have

41 been assigned by the said Gamwell and Wheeler to said banks as collateral security for moneys alleged to have been advanced by said banks respectively to Arthur Gamwell and Gamwell and Wheeler;

That said St. Paul and Tacoma Lumber Company objects and excepts to the allowance of these assigned securities, or of any of them, on the ground that the assignments thereof are invalid, and that said claims against the Government belong to the creditors generally of said bankrupts, for the following reason- and grounds, to wit:

1. For the reason that said assignments were all and each of them without any consideration whatsoever.

2. For the reason that they were in violation of sec. 60 of the Bankrupt Act of the United States for the year 1898, as amended by the Act of Congress of date February 3, 1903.

3. Because in contravention of sections 3477 and 3737 of the Revised Statutes of the United States.

PETERS & POWELL,

*Attorneys for St. Paul & Tacoma Lumber Company.*

Service of within objections and receipt of copy thereof admitted this 18th day of July, 1907.

BAUSMAN & KELLEHER,

*For Seattle Nat'l Bank.*

G. E. DE STEIGUER,

*For National Bank of Commerce.*

42 [Endorsed:] Objections of St. Paul & Tacoma Lumber Company to allowing Preference and Securities claimed by Seattle Nat'l Bank and Nat'l Bank of Commerce. Filed as of July 10th, 1907, 2 P. M. John P. Hoyt, Referee.

In the United States District Court for the Western District of Washington, Northern Division.

In Bankruptcy. No. 3453.

In the Matter of the Estate of GAMWELL & WHEELER, Bankrupts.

*Objections of R. E. Downie, Trustee, to Allowance of Preferences and Securities Claimed by Seattle National Bank and National Bank of Commerce.*

Comes now R. E. Downie, Trustee, and respectfully reports and alleges:

That with the claims filed by the Seattle National Bank and by the National Bank of Commerce herein, there were a number of claims of Gamwell & Wheeler, and of Arthur Gamwell against the United States Government for goods, wares and merchandise sold and delivered by Arthur Gamwell and Gamwell & Wheeler to the said United States Government, which are claimed to have been assigned by the said Gamwell & Wheeler to the said banks respectively as collateral security for moneys alleged to have advanced by said banks respectively to Arthur Gamwell and to Gamwell & Wheeler;

That your trustee is informed and believes that these assignments are invalid, and objects and excepts to their allowance as security for the claims of said banks, but alleges and claims that they belong to the creditors generally of said bankrupts, and to this trustee as their representative, for the following reasons and grounds, to wit:

1. For the reason that said assignments were all and each of them without any consideration whatsoever.

2. For the reason that they were in violation of section 60 of the Bankrupt Act of the United States for the year 1898, as amended by the Act of Congress of date February 3, 1903.

3. Because in contravention of section 3477, Revised Statutes of the United States, and sec. 3737, Revised Statutes of the United States.

R. E. DOWNIE, *Trustee.*

[Endorsed:] Objections to Secured Claims. Filed July 1st, 1907, at 2 P. M. John P. Hoyt, Referee.

In the District Court of the United States for the Western of Washington, Northern Division.

In Bankruptcy. No. 3453.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER, Copartners Doing Business under the Firm Name of Gamwell & Wheeler, Bankrupts.

*Stipulation of Facts.*

It is hereby stipulated and agreed by and between the Seattle National Bank, by Bausman & Kelleher, its attorneys; the National

Bank of Commerce, by Geo. E. de Steiguer, its attorney; R. E. Downey, Trustee of the above-entitled bankrupts by Messrs. Kerr & McCord, his attorneys; the Barber Asphalt Paving Company and the Mukilteo Lumber Company by their attorneys, Peters & Powell and Cooley & Horan, that the facts in relation to the claims against the Government of the United States, assigned by said bankrupts to the above-mentioned banks as collateral security for the indebtedness due from said bankrupts to said banks, and to the allowance of which claims as security for such indebtedness the above-named trustee and the Barber Asphalt Paving Company and the Mukilteo Lumber Company have objected to, are as follows:

45 That each and all of said claims against the United States Government, so assigned, were claims for money due from the Government of the United States to the said bankrupt- upon account of contracts entered into between said bankrupts and the United States, for the furnishing of materials by said bankrupts to various departments of said Government; that said assignments were each and all voluntarily made in consideration of a loan made by said bank to said bankrupts at the time of said assignments and as collateral security for the repayment of said loans and without notice to the other creditors of said bankrupts. That all of such assignments were made after the entering into of said contracts and after partial performance thereof by said bankrupts before the allowance of any such claims of the ascertainment of the amount due thereon, or the issuing of any warrant for the payment thereof, and that none of said assignments were executed in the presence of any witnesses at all, and that none of them recite any warrant for the payment of the claim assigned and that none of them were acknowledged by any officer having authority to take acknowledgment of deeds, or any other acknowledging officer at all, and that none of them were certified as being acknowledged by any officer. The said loans to wit of

46 said banks exceeded in amount the value of said collaterals so assigned to secure the same and there is now due to each of said banks on account of said loans an amount much in excess of the value of the said collaterals so assigned to each of said banks respectively. The claims of said banks and the objections thereto on file are made a part hereof.

SEATTLE NATIONAL BANK,  
By BAUSMAN & KELLEHER, *Its Attorneys.*  
NATIONAL BANK OF COMMERCE,  
By G. E. DE STEIGUER, *Its Attorney.*  
R. E. DOWNEY, *Trustee,*  
By KERR & McCORD, *His Attorneys.*  
ST. PAUL & TACOMA LUMBER CO. &  
BARBER ASPHALT PAVING COMPANY,  
By PETERS & POWELL,  
COOLEY & HORAN,  
*Its Attorneys.*  
MUKILTEO LUMBER COMPANY,  
By COOLEY & HORAN, *Its Attorneys.*

47 In the District Court of the United States for the Western District of Washington, Northern Division.

In Bankruptcy. No. 3453.

In the Matter of the Estate of ARTHUR GAMWELL and PHILIP WHEELER, Copartners Doing Business as Gamwell and Wheeler, Bankrupts.

*Order or Decree of Referee in Bankruptcy.*

The Seattle National Bank having heretofore filed herein its claim against Arthur Gamwell and Philip Wheeler, partners as Gamwell and Wheeler, bankrupts herein, amounting to the sum of twenty-two thousand five hundred and eighty-two 19/100 dollars, with interest therein claiming that there had been assigned to said bank by said bankrupts certain claims against the United States, and by reason of said assignment claiming as to the amount collected upon said claims against the United States preference over the other creditors of said bankrupts, and The National Bank of Commerce of Seattle having filed herein its claim in the sum of thirty-seven thousand one hundred forty-nine 85/100 dollars and interest, therein claiming that

48 there had been assigned to said bank by said bankrupts to secure said claim, certain claims against the United States Government, and said last-mentioned bank, by reason of said assignments claiming a preference, so far as the proceeds of said claims are concerned, over the other creditors of said bankrupts, and thereafter objections having been filed to the allowance of said securities aforesaid by R. E. Downie as trustee of the above-entitled bankrupts, the Barber Asphalt Paving Company, the Mukilteo Lumber Company and the St. Paul and Tacoma Lumber Company, and thereafter a stipulation having been entered into and filed by the Seattle National Bank, said National Bank of Commerce of Seattle, said R. E. Downie, trustee as aforesaid, said St. Paul and Tacoma Lumber Company, said Barber Asphalt Paving Company and said Mukilteo Lumber Company, acting by their respective attorneys, as to the facts relating to said claims of said banks and said assignments to secure the same, which said claims of said banks, said objections, the claims of said objections and said stipulation are hereby referred to and made a part of this order, and thereafter the matter of the allowance of said claims and of the securities therefor and of said objections thereto having been duly set down for argument before the undersigned for the 10th day of July, 1907, at two o'clock P. M.,

49 and there appearing at said hearing said trustee in person and by his attorneys, Kerr & McCord, said Seattle National Bank by Bausman & Kelleher, its attorneys, said National Bank of Commerce of Seattle by George E. de Steiguer, its attorney, and said Barber Asphalt Paving Company, Mukilteo Lumber Company, and St. Paul and Tacoma Lumber Company by Peters & Powell and Cooley & Horan, their attorneys, and said matter having been sub-

mitted to the undersigned upon said claims, objections and stipulation and the argument of counsel:

This Referee, after due consideration thereof and being fully advised in the premises, by reason of the facts so stipulated and the law, does hereby order, adjudge and decree as follows:

1. That the claims of said banks be and each of them is hereby allowed in the amount therein stated, to wit: The claim of the Seattle National Bank in the sum of twenty-two thousand five hundred eighty-two 19/100 dollars, with interest, and the claim of said The National Bank of Commerce in the sum of thirty-seven thousand one hundred forty-nine 85/100 dollars and interest.

2. That said banks are and each of them respectively is entitled to receive on account of claims against the United States Government so assigned to it and shown by the claims of said bank respectively on file herein whatever amount may be collected from the  
50 United States Government on said claims, and the securities of said banks by reason thereof are hereby allowed.

3. That the trustee herein is hereby ordered, as collections of said claims are made, to pay the same to the banks holding assignments thereof.

Dated this 22d day of July, 1907.

JOHN P. HOYT, *Referee*.

[Endorsed:] Order. Filed July 22d, 1907, at 2 P. M. John P. Hoyt, Referee.

In the District Court of the United States for the Western District of Washington, Northern Division.

In Bankruptcy. No. 3453.

In the Matter of ARTHUR GAMWELL & PHILIP WHEELER, Copartners as Gamwell & Wheeler, Bankrupts.

*Order of Referee in Bankruptcy Amending Order of July 22, 1907.*

It appearing that in reducing to form the order made and filed herein on the twenty-second day of July, 1907, there was inadvertently included in the form of the order so made and filed the paragraph numbered three requiring the trustee to pay certain  
51 moneys, when collected by him, to the banks named in said order, which said direction as to payment was not considered upon the hearing which resulted in the making of said order, and as to which question it was not intended that any order or decision should be made. It is therefore now here

Ordered that said paragraph three of said order in words and figures as follows, to wit:

"That the trustee herein is hereby ordered, as collections of said claims are made, to pay the same to the banks holding assignments thereof."

—be and the same hereby is stricken out, vacated and held for naught. The other portions of said order to be and remain in full force and effect, and said order to stand and be in force to the same extent, and to such extent only, as it would have been and would be if said paragraph three had never been included therein.

Dated at Seattle, in said district, this second day of August, 1907.

[SEAL.]

JOHN P. HOYT,  
*Referee in Bankruptcy.*

[Endorsed:] Order Amending Order of July 22d, 1907. Filed Aug. 2d, 1907, 9 A. M. John P. Hoyt, Referee.

52 In the District Court of the United States for the Western District of Washington, Northern Division.

In Bankruptcy. No. 3453.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER, Copartners Doing Business as Gamwell & Wheeler.

*Petition of Barber Asphalt Paving Co. et al. to Referee in Bankruptcy for Review.*

To the Hon. John P. Hoyt, Referee in Bankruptcy:

Your petitioners, the Barber Asphalt Paving Company, the Mukilteo Lumber Company and the St. Paul and Tacoma Lumber Company, corporations, respectfully show:

1. That your petitioners are general creditors of said bankrupts, and that their claims have been filed, and no exceptions thereto have been taken.

2. That on the 22d day of July, 1907, an order was made and entered herein, by your Honor, allowing the claims of the Seattle National Bank and the National Bank of Commerce, and adjudging that said banks were each entitled to receive, on account of certain claims against the United States Government theretofore assigned to them, respectively, by said bankrupts, whatever amount  
53 may be collected from the United States upon said claims; and directing the trustee herein to pay such collections to said banks holding the assignments thereof respectively.

3. That such order was and is erroneous, in that it adjudged that said banks are, and each of them respectively is, entitled to receive on account of said assigned claims against the United States Government whatever amounts may be collected from the United States Government on said claims; and in that said order allowed the said assignments to stand as valid, and as security to said banks, respectively; and in that said order directed the trustee in this matter to pay the collections upon said assigned claims, as the same are made, to said banks holding the assignments thereof.

4. Wherefore, your petitioners feeling aggrieved because of such

order, pray that the same may be reviewed, as provided in the bankruptcy law of 1898, and general order No. 27.

Dated at Seattle, Washington, July 26th, 1907.

BARBER ASPHALT PAVING CO.,  
MUKILTEO LUMBER CO.,  
ST. PAUL & TACOMA LUMBER CO.,  
By COOLEY & HORAN,  
PETERS & POWELL,  
*Their Attorneys.*

54 STATE OF WASHINGTON,  
*County of King, ss:*

R. G. Stevenson, being first sworn, on oath says: I am the Northwestern Manager of the Barber Asphalt Paving Company, one of the petitioners in the foregoing petition, a nonresident corporation; that I make this affidavit on its behalf, and on behalf of its copetitioners; I have read the foregoing petition, know the contents thereof, and believe the same to be true.

R. G. STEVENSON.

Subscribed and sworn to before me this 29th day of July, 1907.  
[SEAL.]

WILLIAM T. LAUBE,  
*Notary Public in and for the State of  
Washington, Residing at Seattle, Wash.*

Service of within petition and receipt of copy thereof admitted this 29th day of July, 1907.

BAUSMAN & KELLEHER.  
G. S. DE STEIGUER.

[Endorsed:] Petition for Review. Filed July 30th, 1907, 11 A. M. John P. Hoyt, Referee.

55 In the District Court of the United States for the Western District of Washington, Northern Division.

In Bankruptcy. No. 3453.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER, Copartners Doing Business as Gamwell & Wheeler, Bankrupts.

*Certificate and Return of Referee in Bankruptcy on Petition for Review.*

A petition for review of the order made herein on the twenty-second day of July, 1907, having been filed herein, the undersigned, the Referee in Bankruptcy before whom the above-entitled matter is pending, and who made the said order, does hereby certify and return:

That the hearing which resulted in the making of said order was



upon an agreed statement of facts, stipulated and agreed to by the parties interested in said hearing, and that for that reason it is the opinion of said undersigned that no further certificate and return is necessary or proper than the certification to the Judge of the above-named court of the claims of the banks, respectively, to which objections were filed and upon which said hearing was had, the  
 56 objections of the trustee and of certain creditors thereto, and said agreed Statement of Facts. Said undersigned, however, upon his own motion did, on the second day of August, 1907, make and file an order herein correcting and amending said order of July twenty-second, 1907, which said order should also be before the Judge of said court.

Said undersigned, therefore, respectfully transmits the claims of the banks, hereinbefore referred to, the objections thereto, the said Statement of Facts, said order of July twenty-second, 1907, and the order amending the same made August second, 1907, together with said petition for review, as a sufficient certificate and return herein.

All of which is respectfully submitted.

Dated at Seattle, in said district, this second day of August, 1907.

JOHN P. HOYT,

*Referee in Bankruptcy.*

[Endorsed:] Certificate and Return. Filed in the U. S. District Court, Western Dist. of Washington, Aug. 3, 1907, 10 A. M. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

57 United States District Court, Western District of Washington,  
 Northern Division.

No. 3453.

In the Matter of ARTHUR GAMWELL & PHILIP WHEELER, Copartners as Gamwell & Wheeler, Bankrupts.

*Memorandum Decision of District Court as to Validity of Assignments of Claims Against the United States Government.*

The Seattle National Bank and the National Bank of Commerce each advanced money to the Bankrupts and receive assignments of bills and accounts for materials furnished to the United States Government, constituting claims against the Government not paid, audited nor allowed and by virtue of said assignments, the two banks assert ownership of the claims and the exclusive right to receive whatever sums of money may be payable thereon. The validity of the assignments is disputed by certain creditors and also by the Trustee of the estate.

It does not appear by the record that the Government has paid any of these claims to anyone, nor that the money due or to become due, has become subject to the jurisdiction of this Court.

58 The subject of the controversy is not funds nor warrants convertible into money of which the court has acquired con-



trol, but unliquidated claims. Section 3477, U. S. R. S., specifically prohibits voluntary assignments of such claims, and all of the adjudged cases cited in the argument recognize the principle that such assignments convey no rights whatever, enforceable against the Government and create no liens in favor of the assignees.

United States v. Gillis, 95 U. S. 407;

Spofford v. Kirk, 97 U. S. 484;

Railway Co. v. United States, 112 U. S. 733;

Ball v. Halsell, 161 U. S. 72;

Nutt v. Knut, 200 U. S. 12;

Henningsen v. U. S. Fidelity & Guaranty Co., 143 Fed. Rep. 812.

After claims have been paid, the Government is not interested in the disposition of the money, and for that reason courts in some of the cases, in adjusting rights between contractors, their creditors, administrators and assignees, have given effect to contracts containing promises respecting payments to become due on claims against the Government.

Goodman v. Niblock, 162 U. S. 556;

Hobbs v. McLean, 117 U. S. 567;

Freedman's Saving & Trust Co. v. Shepherd, 127 U. S. 494;

York v. Conde, 42 N. E. Rep. 193.

59        These decisions do not establish an exception upon which the assignees of the bankrupts in this case can maintain their contention. By operation of law, the rights of the bankrupts passed to the Trustee, and he is the only person authorized to collect the money and give acquittances.

Erwin v. United States, 97 U. S. 392;

Price v. Forrest, 173 U. S. 410.

The decisions in the cases of Bailey v. United States, 109 U. S. 432, and Hardaway & Prowell v. National Surety Co., 150 Fed. Rep. 465, are not analogous to this case and do not overrule the other cases above cited, nor establish an exception to the general rule, which must control my decision in the present case.

The two banks are entitled to prove their claims as general creditors, but they are not entitled to the rights asserted with respect to the several claims against the Government. The order made by the referee will be modified accordingly.

C. H. HANFORD, Judge.

[Endorsed:] Memorandum Decision as to Validity of Assignments of Claims Against the United States Government. Filed Nov. 8, 1907. R. M. Hopkins, Clerk. By A. N. Moore, Deputy.

60 United States District Court, Western District of Washington,  
Northern Division.

No. 3453.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER, Copart-  
ners as Gamwell & Wheeler, Bankrupts.

*Order of District Court Allowing Claims of the Seattle National Bank  
and National Bank of Commerce, etc.*

Order Overruling Allowance by Referee of Claims Against United  
States Government Assigned to Banks, etc.

This matter coming on regularly to be heard upon the order of the  
referee allowing, as valid, the assignments to the Seattle National  
Bank and to the National Bank of Commerce, of certain warrants  
from the United States to the bankrupts, Gamwell & Wheeler, and  
certain claims against the Government on behalf of said bankrupts  
upon contracts of said bankrupts with the Government, and upon  
the exceptions and objections of the Mukilteo Lumber Company and  
the St. Paul & Tacoma Lumber Company, and the Trustee in bank-  
ruptcy on behalf of general creditors, and the Court having heard  
and considered the facts as stipulated herein by the parties,  
61 and argument of counsel, finds that said objections to said  
order of the referee are well taken.

It is therefore ordered and adjudged that the claims of the  
Seattle National Bank and the National Bank of Commerce be  
allowed, as filed in this bankruptcy proceeding, as general unsecured  
claims, and that the assignments from Gamwell & Wheeler to said  
banks of the various warrants, vouchers, orders and claims, as  
scheduled with the trustee in bankruptcy are invalid, and that said  
warrants, orders and claims are a part of the general assets of the  
bankrupt's estate for the security of all creditors alike, and without  
any preference or lien thereof in favor of either of said banks.

Done in open court this 18th day of November, 1907.

C. H. HANFORD, *Judge.*

Each bank excepts to the order disallowing the securities and ex-  
ception is allowed.

C. H. H.

Service of within order and receipt of copy thereof admitted this  
12th day of November, 1907.

G. E. DE STEIGUER,  
*Att'y for Nat'l Bank of Commerce.*  
SEATTLE NAT'L BANK,  
By BAUSMAN & KELLEHER,  
*Its Att'ys.*

62 [Endorsed:] Order Allowing Exceptions of Trustees and Certain General Creditors to Ruling of Referee in Favor of Certain Banking Creditors as to Assigned Claims. Filed in the U. S. District Court, Western Dist. of Washington, Nov. 18, 1907, 10:30 A. M., R. M. Hopkins, Clerk. A. N. Moore, Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3453.

In re ARTHUR GAMWELL and PHILIP WHEELER, Copartners as Gamwell & Wheeler, Bankrupts.

*Petition for Appeal and Order Allowing Appeal, etc.*

The Seattle National Bank, a creditor herein, conceiving itself aggrieved by the order made and entered on the 18th day of November, 1907, in the above-entitled cause, which order sustains the exceptions and objections of the Mukilteo Lumber Company, the St. Paul & Tacoma Lumber Company, and the Trustee in Bankruptcy, to the claims of the Seattle National Bank as filed herein with various assignments from Gamwell & Wheeler to it, with various warrants, vouchers, order- and claims, does  
63 hereby appeal from such judgment to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors herewith and prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

BAUSMAN & KELLEHER,  
*Attorneys for the Seattle National Bank.*

The foregoing petition for appeal allowed this 23d day of November, 1907.

C. H. HANFORD, *Judge.*

[Endorsed:] Petition for Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Nov. 23, 1907. R. M. Hopkins, Clerk.

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3453.

In re ARTHUR GAMWELL and PHILIP WHEELER, Copartners as Gamwell & Wheeler, Bankrupts.

*Assignment of Errors.*

Now on this — day of November, 1907, came The Seattle National Bank, by Bausman & Kelleher, its attorneys, and says that  
64 in the order made in this cause on the 18th day of November, 1907, sustaining the objections of Mukilteo Lumber Com-

pany and St. Paul & Tacoma Lumber Company, and the Trustee in Bankruptcy to the claim of The Seattle National Bank, manifest error did occur and that the order of this District Court is erroneous in sustaining said objections and in pronouncing invalid the assignments from Gamwell & Wheeler to The Seattle National Bank, for the following reasons:

First. That under the laws of the United States, the assignments of the claims, vouchers and warrants held by the bankrupts against the United States and assigned by the bankrupts to The Seattle National Bank, and made a part of said bank's claim herein, were good and valid.

Second. That under the laws of the United States relating to bankruptcy, the assignment of the foregoing claims was a valid security given to The Seattle National Bank before any period forbidden by the bankruptcy laws of the United States as to such security.

Third. That under the bankruptcy laws of the United States, the assignment of the aforesaid claims to this bank by the bankrupt, was for a valuable and present consideration and was good under the bankruptcy laws of the United States.

65 Fourth. That under the laws of the United States relating to the assignment of claims against the United States, the assignments made by the bankrupts aforesaid to this bank were valid as between the trustee in bankruptcy and other creditors and entitled to participate as security in favor of this bank.

Wherefore the Seattle National Bank prays that the order aforesaid be reversed, that the District Court be directed to enter an order allowing the claim of the Seattle National Bank, with the assignments of claims, vouchers, and warrants as by it filed therewith, and sustaining its right to these as a security.

BAUSMAN & KELLEHER,  
*Attorneys for the Seattle National Bank.*

[Endorsed:] Assignment of Errors. Filed in the U. S. District Court, Western Dist. of Washington, Nov. 23, 1907. R. M. Hopkins, Clerk.

66 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3453.

In re ARTHUR GAMWELL and PHILIP WHEELER, Copartners as Gamwell & Wheeler, Bankrupts.

*Bond on Appeal.*

Know all men by these presents: That we, the Seattle National Bank, as principal, and E. W. Andrews, as surety, are held and firmly bound unto R. E. Downie, Trustee in Bankruptcy, and St. Paul & Tacoma Lumber Company, and Mukilteo Lumber Company, and Barbour Asphalt Paving Company, and National Bank of Com-

merce of Seattle, each and all, and to their and each of their successors, administrators and assigns, in the full and just sum of five hundred dollars (\$500), to which payment, well and truly to be made, we bind ourselves, our and each of our heirs, successors, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 23 day of November in the year of our Lord, 1907.

Whereas lately, at a District Court of the United States for the Western District of Washington, Northern Division, in a proceeding entitled "In the Matter of Gamwell & Wheeler, Bankrupts," an order was rendered against the Seattle National Bank, from which  
 67 order said bank has been allowed to appeal, and has caused citation to be issued, citing and admonishing the obligees herein to appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, within thirty days after the date of said citation:

Now, the condition of this obligation is that if the Seattle National Bank shall prosecute this appeal to effect and answer all damages and costs if it fail to make its plea good, then the above obligation is to be void; otherwise to remain in full force and effect.

THE SEATTLE NATIONAL BANK,  
 By E. W. ANDREWS.  
 E. W. ANDREWS.

Sealed and delivered in the presence of:

DAN'L KELLEHER.  
 EDWARD S. BYRNES.

The foregoing bond approved November 23d, 1907.

C. H. HANFORD,  
*United States District Judge.*

[Endorsed:] Bond on Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Nov. 23, 1907. R. M. Hopkins, Clerk.

68 In the United States Circuit Court of Appeals for the Ninth Circuit.

In re ARTHUR GAMWELL and PHILIP WHEELER, Copartners as Gamwell & Wheeler, Bankrupts.

*Citation on Appeal (Copy).*

The United States of America to R. E. Downie, Trustee, and to St. Paul & Tacoma Lumber Company, and to Barber Asphalt Paving Company, and to Mukilteo Lumber Company, and to Gamwell & Wheeler, Bankrupts, and to National Bank of Commerce of Seattle, Greeting:

You are hereby cited and admonished to be and appear at the session of the United States Circuit Court of Appeals for the Ninth Cir-

cuit, to be holden at the city of San Francisco, in the State of California, within thirty days after the date of this citation, pursuant to a petition on appeal and an assignment of errors filed in the clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, in the matter of Arthur Gamwell and Philip Wheeler, doing business as Gamwell & Wheeler, Bankrupts, to show cause, if any there be, why the order rendered in said cause on the 18th day of November, 1907, modifying the order of the referee in bankruptcy, and disallowing the claim of the Seattle National Bank as in the petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 23d day of November, 1907.

[SEAL.]

C. H. HANFORD,  
*United States District Judge.*

Copy of within Citation on Appeal as well as copies of bond on appeal, petition for appeal and assignment of error, received and due service of same acknowledged this 25th day of November, 1907.

G. E. DE STEIGUER,  
*Att'y for National Bank of Commerce.*  
KERR & McCORD,  
*Att'ys for R. E. Downie, Trustee, and*  
*Gamwell & Wheeler, Bankrupts.*  
COOLEY & HORAN,  
Per W. A. PETERS, AND  
PETERS & POWELL,

*Attorneys for Mukilton Lumber Co.,*  
*St. Paul & Tacoma Lumber Co., Barber Asphalt Pvg. Co.*

[Endorsed:] Citation on Appeal. Filed in the U. S. District Court, Western Dist. of Washington. Nov. 27, 1907. R. M. Hopkins, Clerk.

70 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3453.

In re ARTHUR GAMWELL and PHILIP WHEELER, Copartners as Gamwell & Wheeler, Bankrupts.

*Præcipe for Transcript of Record on Appeal.*

To the Clerk of the Above-entitled Court:

You will please prepare and certify transcript for use on appeal of The Seattle National Bank to the United States Circuit Court of Appeals for the Ninth Circuit from the decision of the above court

entered November 18, 1907, consisting of the following files, records and papers in the above-entitled cause:

1. Petition for Adjudication (April 16, 1907);
2. Answer thereto (April 16);
3. Order of Reference (April 16);
4. Order of Adjudication and Appointment of Referee (June 20);
5. Order Confirming Appointment of Referee (June 20);
6. Claim of The Seattle National Bank against Bankrupts (not claim against Arthur Gamwell) (June 4);
- 71 7. Objections of Barber Asphalt Paving Co. to Allowance of Claim (July 10);
8. Objections of Mukilteo Lumber Co. to same (July 10);
9. Objections of St. Paul and Tacoma Lumber Co. to same (July 10);
10. Objections of R. E. Downie, Trustee, to same (July 1);
11. Stipulation Between Banks and Objectors Settling Facts (July 10);
12. Order of July 22 Allowing Claims;
13. Order dated August 2 Amending Order of July 22;
14. Petition for Review by Objectors (July 30);
15. Return of Referee filed August 3;
16. Judge Hanford's Memorandum Decision Dated November 18.
17. Order Allowing Exceptions, Dated November 18;
18. Petition for Appeal (Nov. 23);
19. Assignment of Errors (Nov. 23);
20. Bond on Appeal (Nov. 23);
21. Citation on Appeal (Nov. 23);
22. This Præcipe (Dec. 6).

BAUSMAN & KELLEHER,  
*Attorneys for The Seattle National Bank.*

72 [Endorsed:] Præcipe for Transcript. Filed in the U. S. District Court, Western Dist. of Washington, Dec. 6, 1907.  
R. M. Hopkins, Clerk. W. D. Covington, Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

In Bankruptcy. No. 3453.

In re ARTHUR GAMWELL and PHILIP WHEELER, Copartners as Gamwell & Wheeler, Bankrupts.

*Clerk's Certificate to Transcript of Record (Original).*

UNITED STATES OF AMERICA,  
*Western District of Washington, ss:*

I, R. M. Hopkins, Clerk of the District Court of the United States for the Western District of Washington, do hereby certify the fore-

going fifty-five (55) typewritten pages, numbered from 1 to 55, inclusive, to be a full, true and correct copy of the record and proceedings in the above and therein entitled cause as is called for by the præcipe of the attorneys for The Seattle National Bank, one of the creditors and appellants in the above-entitled cause, as the same remain of record and on file in the office of the clerk of said court; and that the same constitute the record on appeal herein from the order, judgment and decree, dated November 8, 1907, of the District Court of the United States for the Western District of Washington, to the Circuit Court of Appeals for the Ninth Judicial Circuit.

I further certify that I hereto attach and herewith transmit the original citation issued in this cause.

I further certify that the cost of preparing the foregoing record on appeal is the sum of \$41.50 and that the said sum has been paid to me by Bausman & Kelleher, attorneys for The Seattle National Bank, one of the creditors and appellants herein.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said District Court this 16th day of December, 1907.

[SEAL.]

R. M. HOPKINS, *Clerk.*

74 In the United States Circuit Court of Appeals for the Ninth Circuit.

In re ARTHUR GAMWELL and PHILIP WHEELER, Copartners as Gamwell & Wheeler, Bankrupts.

*Citation on Appeal (Original).*

The United States of America to R. E. Downie, Trustee, and to St. Paul & Tacoma Lumber Company, and to Barber Asphalt Paving Company, and to Mukilteo Lumber Company, and to Gamwell & Wheeler, Bankrupts, and to National Bank of Commerce of Seattle, Greeting:

You are hereby cited and admonished to be and appear at the session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days after the date of this citation, pursuant to a petition on appeal and an assignment of errors filed in the clerk's office of the District Court of the United States for the Western

75 District of Washington, Northern Division, in the matter of Arthur Gamwell and Philip Wheeler, doing business as Gamwell & Wheeler, Bankrupts, to show cause, if any there be, why the order rendered in said cause on the 18th day of November, 1907, modifying the order of the referee in bankruptcy, and disallowing the claim of The Seattle National Bank as in the petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 23d day of November, 1907.

[SEAL.]

C. H. HANFORD,  
*United States District Judge.*



Copy of within citation on appeal, as well as copies of bond on appeal, petition for appeal and assignment of error, received and due service of same acknowledged this 25th day of November, 1907.

G. E. DE STEIGUER,

*Att'y for National Bank of Commerce.*

KERR & McCORD,

*Att'ys for R. E. Downie, Trustee, and  
Gamwell & Wheeler, Bankrupts.*

COOLEY & HORAN,

Per W. A. PETERS, AND

PETERS & POWELL,

*Att'ys for Mukilteo Lumber Co., St. Paul & Tacoma  
Lumber Co., Barber Asphalt Paving Co.*

76 [Endorsed:] No. 3453. In the United States Circuit Court of Appeals for the Ninth Circuit. In re Gamwell & Wheeler, Bankrupts. Citation on Appeal. Filed in the U. S. District Court, Western District of Washington. Nov. 27, 1907. R. M. Hopkins, Clerk. — — —, Deputy. Bausman & Kelleher, Attorneys for Seattle Nat. Bank, 1116-1124 Alaska Bldg., Seattle, Wash. At which office they consent that service of all subsequent papers, except writs and processes, may be made upon them.

[Endorsed:] No. 1528. United States Circuit Court of Appeals for the Ninth Circuit. The Seattle National Bank, a Creditor, Appellant, vs. R. E. Downie, Trustee, St. Paul & Tacoma Lumber Company, Barber Asphalt Paving Company, Mukilteo Lumber Company, Gamwell & Wheeler, Bankrupts, and National Bank of Commerce of Seattle, Appellees. In the Matter of Arthur Gamwell and Philip Wheeler, Copartners as Gamwell & Wheeler, Bankrupts. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed December 20, 1907.

F. D. MONCKTON, *Clerk.*

77 United States Circuit Court of Appeals for the Ninth Circuit.  
No. 1528.

THE SEATTLE NATIONAL BANK, a Creditor, Appellant,  
vs.

R. E. DOWNIE, Trustee; ST. PAUL & TACOMA LUMBER COMPANY,  
Barber Asphalt Paving Company, Mukilteo Lumber Company,  
Gamwell & Wheeler, Bankrupts, and National Bank of Commerce  
of Seattle, Appellees.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER,  
Copartners as Gamwell & Wheeler, Bankrupts.

*Certificate of Clerk U. S. Circuit Court of Appeals to Printed Transcript of Record.*

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing seventy

six (76), pages, numbered from one (1) to seventy-six (76), inclusive, to be a true copy of the printed Transcript of Record upon appeal from the United States District Court for the Western District of Washington, Northern Division, in the above-entitled case as the original and copies thereof were printed under my supervision pursuant to the provisions of rule 23 of the rules of practice of the said the United States Circuit Court of Appeals for the Ninth Circuit and as the said original remains of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit in the City of San Francisco, in the State of California, this twenty-sixth day of June, A. D. 1908.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk*.

78 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1528.

THE SEATTLE NATIONAL BANK, a Creditor, Appellant,

vs.

R. E. DOWNIE, Trustee; ST. PAUL & TACOMA LUMBER COMPANY, Barber Asphalt Paving Company, Mukilteo Lumber Company, Gamwell & Wheeler, Bankrupts, and National Bank of Commerce of Seattle, Appellees.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER, Copartners as Gamwell & Wheeler, Bankrupts.

*Addenda.*

Proceedings had in the United States Circuit Court of Appeals for the Ninth Circuit.

79 At a stated term, to-wit: the October Term A. D. 1907 of the United States Circuit Court of Appeals for the Ninth Circuit, held at the Court Room, in the City and County of San Francisco, on Monday the seventeenth day of February in the year of our Lord one thousand, nine hundred and eight.

Present: The Honorable William B. Gilbert, Circuit Judge; Honorable Erskine M. Ross, Circuit Judge; Honorable William W. Morrow, Circuit Judge.

No. 1527.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, a Creditor,  
Appellant,

vs.

R. E. DOWNIE, Trustee, et al., Appellees.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER, Copart-  
ners as Gamwell & Wheeler, Bankrupts.

No. 1528.

THE SEATTLE NATIONAL BANK, a Creditor, Appellant,

vs.

R. E. DOWNIE, Trustee, et al., Appellees.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER, Copart-  
ners as Gamwell & Wheeler, Bankrupts.

No. 1529.

THE SEATTLE NATIONAL BANK, Petitioner,

vs.

R. E. DOWNIE, Trustee, et al., Respondents.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER, Copart-  
ners as Gamwell & Wheeler, Bankrupts.

No. 1532.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, Petitioner,

vs.

R. E. DOWNIE, Trustee, et al., Respondents.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER, Copart-  
ners as Gamwell & Wheeler, Bankrupts.

80

*Order of Submission.*

Ordered, above-entitled appeals and matters argued by Mr. Daniel Kelleher, counsel for the appellants and petitioners, and Mr. C. J. Horan, counsel for the appellees and respondents, and submitted to the Court for consideration and decision.

81 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1527.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, a Creditor,  
Appellant,

vs.

R. E. DOWNIE, Trustee, et al., Appellees.

No. 1528.

THE SEATTLE NATIONAL BANK, a Creditor, Appellant,

vs.

R. E. DOWNIE, Trustee, et al., Appellees.

No. 1529.

THE SEATTLE NATIONAL BANK, Petitioner,

vs.

R. E. DOWNIE, Trustee, et al., Respondents.

No. 1532.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, Petitioner,

vs.

R. E. DOWNIE, Trustee, et al., Respondents.

*Opinion U. S. Circuit Court of Appeals.*

MONDAY, May 11, 1908.

Appeal and Petition for Revision and Review from the United States District Court for the Western District of Washington, Northern Division.

82 Bausman & Kelleher, Attorneys for The Seattle National Bank.

George E. de Steiguer, Attorney for the National Bank of Commerce of Seattle.

Peters & Powell, Cooley & Horan, Attorneys for Appellees.

Kerr & McCord, Attorneys for Trustee.

Before Gilbert, Ross, and Morrow, Circuit Judges.

MORROW, Circuit Judge, delivered the opinion of the Court:

Arthur Gamwell and Philip Wheeler, partners under the firm name of Gamwell & Wheeler, were adjudged bankrupts in the District Court of the United States for the Western District of Washington, Northern Division, on the 16th day of April, 1907, and the same day R. E. Downie was appointed receiver of the partnership property. Thereafter he was elected and qualified as permanent

trustee, and by an order made June 20, 1907, was authorized to collect all sums of money due the bankrupts from the United States Government or any department thereof. On the 4th day of June, 1907, the National Bank of Commerce of Seattle filed its proof of debt against the bankrupt partnership, in the sum of \$37,149.85. The proof set forth that the only securities held by said corporation for said debt were certain described claims against the

83 United States Government on account of supplies furnished, and assigned to the bank by the said Gamwell & Wheeler to secure said indebtedness. These claims appear to be sixteen in number, and amount in the aggregate to the sum of \$33,517.48. The first claim is dated December 10, 1906, and the last February 15, 1907. On June 18, 1907 the Seattle National Bank filed its proof of debt against the bankrupt partnership for the sum of \$22,582.19 with interest. The proof set forth that the only securities held by said corporation for said debt were certain described claims against the United States Government, on account of supplies furnished, and assigned to the bank by said Gamwell & Wheeler to secure said indebtedness. The claims appear to be sixty-one in number and amount in the aggregate to \$38,509.32. The first claim is dated September 25, 1906 and the last April 4, 1907.

The respondents filed objections to the allowance of these assigned securities. One of these objections was that the assignments were invalid under Section 3477 of the Revised Statutes of the United States, and that the claims against the Government belonged to the creditors of the bankrupts generally.

On the 10th of July, 1907, the parties hereto entered into a stipulation as to said assigned claims, as follows:

"That the facts in relation to the claims against the Government of the United States, assigned by said bankrupts to the above-mentioned banks as collateral security for the indebtedness due from said bankrupts to said banks, and to the allowance of which claims as security

for such indebtedness the above-named Trustee and the Barber  
84 Asphalt Paving Company and the Mukilteo Lumber Company have objected to, are as follows:

"That each and all of said claims against the United States Government, so assigned, were claims for money due from the Government of the United States to the said bankrupt upon account of contracts entered into between said bankrupts and the United States, for the furnishing of materials by said bankrupts to various departments of said Government; that said assignments were each and all voluntarily made in consideration of a loan made by said bank to said bankrupts at the time of said assignments and as collateral security for the repayment of said loans and without notice to the other creditors of said bankrupts. That all of such assignments were made after the entering into of said contracts and after partial performance thereof by said bankrupts before the allowance of any of such claims or the ascertainment of the amount due thereon, or the issuing of any warrant for the payment thereof, and that none of said assignments were executed in the presence of any witnesses at all, and that none of them recite any warrant for the payment of the claim assigned

and that none of them were acknowledge by any officer having authority to take acknowledgment of deeds, or any other acknowledging officer at all, and that none of them were certified as being acknowledged by any officer. The said loans to each of said banks exceeded in amount the value of said collaterals so assigned to secure the same, and there is now due to each of said banks on account of said loans an amount in excess of the value of the said collaterals so assigned to each of said banks respectively. The claims  
 85 of said banks and the objections thereto on file are made a part hereof."

The Referee in Bankruptcy, on the 22d of July, 1907, allowed the claim of the Seattle National Bank in the sum of \$22,582.19 and interest and the claim of the National Bank of Commerce in the sum of \$37,149.85 and interest, and ordered and decreed that said banks were each of them respectively entitled to receive on account of claims against the United States Government so assigned to it and shown by the claims of said bank respectively on file, whatever amount might be collected from the United States Government of said claims, and the securities of said banks by reason thereof were allowed and the Trustee was ordered, as collections of said claims were made, to pay the same to the banks holding the assignments thereof. Thereupon the respondents, except the Trustee, petitioned the District Court for a review of the order of the Referee. Upon this review the Judge of the District Court allowed the claims of the banks as general debts, but disallowed their claims of preference. The National Bank of Commerce of Seattle and The Seattle National Bank, have brought this matter to this Court for review, both by appeal and by petition.

The appellees rely upon the provisions of Section 3477 of the Revised Statutes of the United States to support the order of the District Court. That Section is as follows:

"All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the con-  
 86 sideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same."

This statute has been before the court in a number of cases and held applicable to all cases where the assignee seeks to enforce the assigned claim against the United States. *United States v. Gillis* 95 U. S. 407. 416; *St. Paul R. R. Co. v. United States* 112 U. S. 733.

In *United States v. Gillis, supra*, it was contended on behalf of the assignee of the claimant that the statute was applicable only to claims asserted before the Treasury Department, but the Court said:

We discover nothing in the reason, nothing in the mischief the act is plainly intended to remedy, and nothing in the language  
87 employed tending to warrant the admission of any exceptions from the comprehensive provisions made, nothing that can justify our holding that when Congress said all transfers or assignments, partial or entire, absolute or conditional, of claims against the United States shall be null and void, they meant they should be in operation (inoperative) only when presented to the accounting officers of the treasury, but effective when presented everywhere else."

It has also been held applicable to assignments in which a contract is made for the prosecution of a claim against the United States and an assignment is made of a portion of the claim or a lien created on it to secure payment for services rendered in prosecuting the claim. *Ball v. Halsell* 161 U. S. 72; *Nutt v. Knut* 200 U. S. 12. In the latter case the Court, referring to the clause in the contract making the payment of the attorney's compensation a lien upon the claim asserted against the government, said:

"In effect or by its operation it transferred or assigned to the attorney in advance of the allowance of the claim such an interest as would secure the payment of the fee stipulated to be paid. All this was contrary to the statute; for its obvious purpose, in part, was to forbid any one who was a stranger to the original transaction to come between the claimant and the Government, prior to the allowance of a claim, and who, in asserting his own interest or share in the claim, pending its examination, might embarrass the conduct of the business on the part of the officers of the Government.

It has also been held applicable to assigned orders drawn by the owner of a claim against the United States upon the  
88 attorneys employed by him in the prosecution of the claim, directing them to pay to a third person certain sums out of any money coming into their hands on account of the claim. *Spofford v. Kirk* 97 U. S. 484. In this case the Court, referring to the language of the statute, says:

"It would seem to be impossible to use language more comprehensive than this. It embraces alike the legal and equitable assignments. It includes powers of attorney, orders, or other authorities for receiving payment of any such claim, or any part or share thereof. It strikes at every derivative interest, in whatever form acquired, and incapacitates every claimant upon the government from creating an interest in the claim in any other than himself."

On the other hand it has been held that the statute does not render invalid an assignment where the original claimant became a bankrupt and assigned his property to an assignee in bankruptcy.

"It does not embrace cases where there has been a transfer of title by operation of law. The passing of claims to heirs, devisees, or assignees in bankruptcy is not within the evil at which the statute aimed." *Erwin v. U. S.* 97 U. S. 393, 397.

It has also been held that the statute did not embrace the case of a voluntary general assignment by an insolvent for the benefit of



his creditors. *Goodman v. Niblack* 102 U. S. 556; *Butler v. Gorley* 146 U. S. 303; that it does not render invalid a contract of partnership to furnish supplies to the United States or a  
 89 promise by one to another of the partners to pay a sum already due him under the partnership articles out of money to be received from the United States for such supplies, *Hobbs v. McLean* 117 U. S. 567; that it does not affect the right of a mortgagee of real estate leased to the United States, or of a pledgee of the funds thereof to recover from the mortgagors or pledgors the amount of funds paid to them by the United States. *Freedman Saving & Trust Co. v. Shepherd* and *Shepherd v. Thomson* 127 U. S. 494; that its inhibition of powers of attorney executed in advance of the allowance of the claim and the issuing of a warrant therefor cannot be used to compel a second payment after the amount thereof has been paid to the person authorized by the claimant to receive it. *Bailey v. United States*, 109 U. S. 432; that it does not prevent any court of competent jurisdiction as to subject matter and parties from making such orders as may be necessary or appropriate to prevent one who has a claim for money against the Government from withdrawing the proceeds of such claim from the reach of creditors, provided such orders do not interfere with the examination and allowance or rejection of such claim by the proper officers of the Government, nor in any wise obstruct any action that such officers may legally take under the statute relating to allowance or payment of claims against the United States. *Price v. Forrest* 173 U. S. 410, 423. The purpose of the statute is to protect the Government and not the parties to the assignment. *Goodman v. Niblack*, *supra*. Hence, where a claim has been allowed by the accounting officers of the  
 90 United States, a warrant issued therefor and delivered to the claimant, the Government is no longer concerned with his disposition of the draft or the funds which it represented. *York v. Conde* 147 N. Y. 486; 42 N. E. 193; *Farmers' National Bank v. Robinson* 59 Kan. 777, 53 Pac. 762.

In the present case the claims of Gamwell & Wheeler against the Government of the United States were voluntarily assigned after entry into the contracts and after partial performance, but before the allowance of any such claims, the ascertainment of the amount due thereon or the issuing of any warrant for the payment thereof. None of the assignments was executed in the presence of any witnesses, and none of them recites any warrant for the payment of the claims assigned, and none of them was acknowledged by any officer having authority to take acknowledgments of deeds, and none of them was certified as being acknowledged by any officer. These assignments are, therefore, within the express language of the statute, and not within any of its exceptions. They are also within the terms of the statute as interpreted by the Supreme Court in *Spofford v. Kirk*, *supra*, in *St. Paul & Duluth R. R. v. United States*, *supra*, in *Ball v. Halsell*, *supra*, and not within the exceptions mentioned in any of the other cases to which reference has been made. But the transfer of these claims to the trustee in bankruptcy by operation of law comes within the exception declared by the Supreme Court in *Erwin v. United States*, *supra*. It follows that the assignments in



question are null and void and that the trustee in bankruptcy is the proper person to receive from the officers of the United States Government any and all sums due to the said bankrupts, which when received are a part of the general assets of the bankrupts' estate for the benefit of all creditors alike, and without any preference in favor of either of said banks.

The order of the District Court in each of the above-entitled cases is affirmed.

Endorsed: Opinion. Filed May 11, 1908. F. D. Monckton, Clerk.

92 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1528.

THE SEATTLE NATIONAL BANK, a Creditor, Appellant,  
vs.

R. E. DOWNIE, Trustee; ST. PAUL & TACOMA LUMBER COMPANY, Barber Asphalt Paving Company, Mukilteo Lumber Company, Gamwell & Wheeler, Bankrupts, and National Bank of Commerce of Seattle, Appellees.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER,  
Copartners as Gamwell & Wheeler, Bankrupts.

*Decree U. S. Circuit Court of Appeals.*

Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Washington, Northern Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the order of the said District Court in this cause be, and the same is hereby, affirmed, with costs to the appellees.

(Endorsed:) Decree. Filed and Entered May 11, 1908. F. D. Monckton, Clerk.

93 At a stated term, to wit: the October Term A. D. 1907 of the United States Circuit Court of Appeals for the Ninth Circuit, held at the Court Room, in the City and County of San Francisco, on Monday the first day of June in the year of our Lord one thousand, nine hundred and eight.

Present: The Honorable William B. Gilbert, Circuit Judge; Honorable Erskine M. Ross, Circuit Judge; Honorable William W. Morrow, Circuit Judge.

No. 1528.

THE SEATTLE NATIONAL BANK, a Creditor, Appellant,

vs.

R. E. DOWNIE, Trustee, et al., Appellees.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER,  
Copartners as Gamwell & Wheeler, Bankrupts.

*Order Relative to Findings of Fact and Conclusions of Law.*

It is ordered that the Findings of Fact and Conclusions of Law of this Court in the above-entitled cause be, and hereby are, this day filed therein nunc pro tunc as of the eleventh day of May, A. D. 1908.

94 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1528.

THE SEATTLE NATIONAL BANK, a Creditor, Appellant,

vs.

R. E. DOWNIE, Trustee; ST. PAUL & TACOMA LUMBER COMPANY, Barber Asphalt Paving Company, Mukilteo Lumber Company, Gamwell & Wheeler, Bankrupts, and National Bank of Commerce of Seattle, Appellees.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER,  
Copartners as Gamwell & Wheeler, Bankrupts.

Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

*Findings of Fact and Conclusions of Law.*

95 This Court, having considered this case from the transcript of the record submitted to it, makes the following

*Findings of Fact.*

I.

Arthur Gamwell and Philip Wheeler, partners, under the firm name of Gamwell & Wheeler, were adjudged bankrupts in the Dis-

trict Court of the United States for the Western District of Washington, Northern Division, on the 16th day of April, 1907, and on the same day R. E. Downie was appointed receiver of the partnership property. Thereafter, he was elected and qualified as permanent trustee, and by order of the Court, made June 20, 1907, was authorized to collect all sums of money due the bankrupts from the United States government or any department thereof. On the 4th day of June, 1907, the National Bank of Commerce of Seattle filed its proof of debt against the bankrupt partnership, in the sum of Thirty-seven Thousand One Hundred Forty-Nine and 85/100 (\$37149.85). The proof set forth that the only securities held by said corporation for said debt were certain described claims against the United States Government on account of supplies furnished, and assigned to the bank by the said Gamwell & Wheeler to secure said indebtedness. These claims were sixteen in number, and amount in the aggregate to the sum of Thirty-three Thousand Five Hundred Seventeen and 48/100 (\$33517.48) Dollars. The first claim is dated December 10, 1906, and the last February 15, 1907. On June 18, 1907, the

96 Seattle National Bank filed its proof of debt against the bankrupt partnership for the sum of Twenty-two Thousand Five Hundred Eighty-two and 19/100 (\$22582.19) Dollars with interest. The proof set forth that the only securities held by said corporation for said debt were certain described claims against the United States Government on account of supplies furnished and assigned to the bank by said Gamwell & Wheeler to secure said indebtedness. The claims were sixty-one in number and amount in the aggregate to Thirty-eight Thousand Five Hundred Nine and 32/100 (\$38509.32) Dollars. The first claim is dated September 25, 1906, and the last April 4, 1907.

The respondents filed objections to the allowance of these assigned securities. One of these objections was that the assignments were invalid under Section 3477 of the Revised Statutes of the United States, and that the claims against the Government belonged to the creditors of the bankrupts generally.

On the 10th of July, 1907, the parties hereto entered into a stipulation as to said assigned claims, stipulating as to certain facts with regard thereto, which said facts are therefore found by the court as follows:

"That the facts in relation to the claims against the Government of the United States, assigned by said bankrupts to the above mentioned banks as collateral security for the indebtedness due from said bankrupts to said banks, and to the allowance of which claims as security for such indebtedness the above named Trustee and the Barber Asphalt Paving Company and the Mukilteo Lumber Company have objected to, are as follows:

97 "That each and all of said claims against the United States Government, so assigned, were claims for money due from the Government of the United States to the said bankrupts upon account of contracts entered into between said bankrupts and the United States for the furnishing of materials by said bankrupts to various departments of said Government; that said assignments

were each and all voluntarily made in consideration of a loan made by said bank at the time of said assignments and as collateral security for the repayment of said loans and without notice to the other creditors of said bankrupts. That all of such assignments were made after the entering into of said contracts and after partial performance thereof by said bankrupts before the allowance of any such claims or the ascertainment of the amount due thereon, or the issuing of any warrant for the payment thereof, and that none of said assignments were executed in the presence of any witnesses at all, and that none of them recite any warrant for the payment of the claim assigned and that none of them were acknowledged by any officer having authority to take acknowledgment of deeds, or any other acknowledging officer at all, and that none of them were certified as being acknowledged by any officer. The said loans to each of said banks exceeded in amount the value of said collaterals so assigned to secure the same, and there is now due to each of said banks on account of said loans an amount in excess of the value of the said collaterals so assigned to each of said banks respectively. The claims of said banks and the objections thereto on file are made a part hereof."

98

## II.

The Referee in Bankruptcy, on the 22nd of July, 1907, allowed the claim of the Seattle National Bank in the sum of Twenty-two Thousand Five Hundred Eighty-two and 19/100 (\$22582.19) Dollars and interest and the claim of The National Bank of Commerce in the sum of Thirty-seven Thousand One Hundred Forty-nine and 85/100 (\$37149.85) Dollars and interest, and ordered and decreed that said banks were each of them respectively entitled to receive on account of claims against the United States Government so assigned to it and shown by the claims of said bank respectively on file, whatever amount might be collected from the United States Government of said claims, and the securities of said banks by reason thereof were allowed and the Trustee was ordered, as collections of said claims were made, to pay the same to the banks holding the assignments thereof. Thereupon the respondents, except the Trustee, petitioned the District Court for a review of the order of the Referee. Upon this review the Judge of the District Court allowed the claims of the banks as general debts, but disallowed their claims of preference. The National Bank of Commerce of Seattle and The Seattle National Bank have brought this matter to this Court for review, both by appeal and by petition.

As

*Conclusions of Law*

from the foregoing facts the Court holds as follows:

## I.

That the claim of The Seattle National Bank should be  
 99 allowed in the sum of Twenty-two Thousand Five Hundred  
 Eighty-two and 19/100 (\$22582.19) Dollars and the claim of  
 The National Bank of Commerce of Seattle in the sum of Thirty-  
 seven Thousand One Hundred Forty-nine and 85/100 (\$37149.85)  
 Dollars should also be allowed.

## II.

That the claim of each bank should be so allowed as a general  
 debt, but its claim of preference and its claim for a lien by it made  
 upon said fund so assigned should be disallowed.

WM. W. MORROW,  
*U. S. Circuit Judge.*

(Endorsed:) Docketed. No. 1528. United States Circuit Court  
 of Appeals for the Ninth Circuit. The Seattle National Bank, Ap-  
 pellant, v. R. E. Downie, Trustee, et al., Appellees. In the Matter  
 of Arthur Gamwell and Philip Wheeler, Copartners, as Gamwell &  
 Wheeler, Bankrupts. Findings of Fact and Conclusions of Law.  
 Pursuant to Order this day entered, Filed Jun- 1, 1908 nunc pro  
 tune as of May 11, 1908, F. D. Monekton, Clerk.

100 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1528.

THE SEATTLE NATIONAL BANK, Appellant,  
 vs.

R. E. DOWNIE, Trustee; ST. PAUL & TACOMA LUMBER COMPANY,  
 Barber Asphalt Paving Company, Mukilteo Lumber Company,  
 Gamwell & Wheeler, Bankrupts, and National Bank of Commerce  
 of Seattle, Appellees.

*Petition for Appeal and Order Allowing it.*

The Seattle National Bank, a Creditor, conceiving itself ag-  
 grieved by the decision and decree of this Court filed herein  
 May 11, 1908, which decision and decree affirms the order of the  
 District Court of the United States for the Western District of  
 Washington, Northern Division, sustaining the exceptions and ob-  
 jections of the Mukilteo Lumber Company, St. Paul & Tacoma Lum-  
 ber Company, and the Trustee in Bankruptcy, to the claims of this  
 appellant (as filed herein with various assignments from Gamwell &  
 Wheeler to it, with various warrants, vouchers, orders and claims)

does hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors herewith, and prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which this  
 101 decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

BAUSMAN & KELLEHER,  
*Attorneys for The Seattle National Bank.*

The foregoing petition for appeal allowed this 1st day of June, 1908.

WM. W. MORROW,  
*Circuit Judge.*

(Endorsed:) Docketed. No. 1528. In the United States Circuit Court of Appeals for the Ninth Circuit. The Seattle National Bank, Appellant, vs. R. E. Downie, Trustee, et al., Appellees. Petition for Appeal and Order Allowing It. Filed Jun-1, 1908. F. D. Monckton, Clerk. Bausman & Kelleher, Attorneys for Appellant. 1116-1124 Alaska Bldg., Seattle, Wash.

102 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1528.

THE SEATTLE NATIONAL BANK, Appellant,

vs.

R. E. DOWNIE, Trustee; ST. PAUL & TACOMA LUMBER COMPANY, Barber Asphalt Paving Company, Mukilteo Lumber Company, Gamwell & Wheeler, Bankrupts, and National Bank of Commerce of Seattle, Appellees.

*Assignment of Errors.*

Now on this 1 day of June, 1908, came The Seattle National Bank, by Bausman & Kelleher, its attorneys and says that in the decision and decree made in this cause in the Circuit Court of Appeals on the 11th day of May, 1908, sustaining the objections of the Mukilteo Lumber Company, the St. Paul & Tacoma Lumber Company, and the Trustee in Bankruptcy, to the claim of The Seattle National Bank, manifest error did occur, and that the decree of this United States Circuit Court of Appeals is erroneous in affirming the order of the District Court of the United States for the Western District of Washington, in sustaining said objections, and in pronouncing invalid the assignments from Gamwell & Wheeler to The Seattle National Bank, for the following reasons:

First. That under the laws of the United States, the assignments of the claims, vouchers and warrants held by the bankrupts  
 103 against the United States and assigned by the bankrupts to The Seattle National Bank, and made a part of said bank's claim herein, were good and valid.

Second. That under the laws of the United States relating to bankruptcy, the assignment of the foregoing claims was a valid security given to The Seattle National Bank before any period forbidden by the bankruptcy laws of the United States as to such security.

Third. That under the bankruptcy laws of the United States, the assignment of the aforesaid claims to this bank by the bankrupt, was for a valuable and present consideration and was good under the bankruptcy laws of the United States.

Fourth. That under the laws of the United States relating to the assignment of claims against the United States, the assignments made by the bankrupts aforesaid to this bank were valid as between the trustee in bankruptcy and other creditors and entitled to participate as security in favor of this bank.

Wherefore The Seattle National Bank prays that the United States Circuit Court of Appeals for the Ninth Circuit be reversed in its decision and decrees herein complained of, and that both that Court and the District Court aforesaid be directed to enter an order allowing the claim of The Seattle National Bank, with the assignments of claims, vouchers and warrants as by it filed therewith, and  
104 sustaining its right to these as a security.

BAUSMAN & KELLEHER,  
*Attorneys for Seattle National Bank.*

(Endorsed:) Original. Docketed. No. 1528. In the United States Circuit Court of Appeals for the Ninth Circuit. The Seattle National Bank, Appellant, v. R. E. Downie, Trustee, et al., Appellees. Assignment of Errors. Filed Jun- 1, 1908. F. D. Monckton, Clerk. Bausman & Kelleher, Attorneys for Appellant. 1116-1124 Alaska Bldg., Seattle, Wash.

105 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1528.

THE SEATTLE NATIONAL BANK, Appellant,  
vs.

R. E. DOWNIE, Trustee; ST. PAUL & TACOMA LUMBER COMPANY, Barber Asphalt Paving Company, Mukilteo Lumber Company, Gamwell & Wheeler, Bankrupts, and National Bank of Commerce of Seattle, Appellees.

*Bond on Appeal.*

Know all men by these presents That we, The Seattle National Bank, as principal, and E. W. Andrews as surety, are held and firmly bound unto R. E. Downie, Trustee in Bankruptcy, St. Paul & Tacoma Lumber Company, Mukilteo Lumber Company, Barber Asphalt Paving Company, Gamwell & Wheeler, and National Bank of Commerce of Seattle, each and all, and to their and each of their successors, administrators and assigns, in the full and just sum of five

hundred dollars (\$500.00), to which payment, well and truly to be made, we bind ourselves, our and each of our heirs, successors, executors and administrators, jointly and severally, by these presents:

Sealed with our seals this 27 day of May, 1908.

Whereas lately, at a District Court of the United States for the Western District of Washington, Northern Division, in a proceeding entitled "In the Matter of Gamwell & Wheeler, Bankrupts,"  
 106 an order was rendered against The Seattle National Bank, from which order said Bank did appeal to the United States Circuit Court of Appeals for the Ninth Circuit; and,

Whereas, in said Circuit Court of Appeals there was, on the 11th day of May, 1908, a decision and decree entered affirming the order of the District Court; and,

Whereas, from this latter decision and decree of May 11th The Seattle National Bank has been allowed to appeal, and citation has been issued herein citing and admonishing the obligees herein to appear at a session of the Supreme Court of the United States to be held within sixty days after the date of said citation;

Now, the condition of this obligation is that if The Seattle National Bank shall prosecute this appeal to effect and answer all damages and costs if it fail to make its plea good, this obligation is to be void; otherwise to remain in full force and effect.

THE SEATTLE NATIONAL BANK,  
 By E. W. ANDREWS, *President*.  
 E. W. ANDREWS.

The foregoing bond approved this 1st day of June, 1908.

WM. W. MORROW,  
*Circuit Judge.*

(Endorsed:) Original. Docketed. No. 1528. In the United States Circuit Court of Appeals for the Ninth Circuit. The Seattle National Bank, Appellant, vs. R. E. Downie, Trustee, et al., Appellees. Bond on Appeal. Filed Jun- 1, 1908, F. D. Monckton, Clerk. Bausman & Kelleher, Attorneys for Appellant, 1116-1124 Alaska Bldg., Seattle, Wash.

107 In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 1528.

THE SEATTLE NATIONAL BANK, Appellant,  
 v.  
 R. E. DOWNIE, Trustee, et al., Appellees.

*Certificate of Associate Justice.*

Whereas Arthur Gamwell and Philip Wheeler, partners under the firm name of Gamwell & Wheeler, were adjudged bankrupts in the District Court of the United States for the Western District of



Washington in April, 1907, and such proceedings were had in that bankruptcy that R. E. Downie was appointed permanent trustee, and thereafter the Seattle National Bank filed its proof of debt against Gamwell & Wheeler in the sum of \$22,582.19 accompanied by collateral securities therefor, which securities were an assignment of certain described claims against the United States Government on account of supplies furnished to the United States; and,

Whereas the assigned claims aggregated \$38,509.32, all of which claims were alleged to be previous to the bankruptcy; and,

Whereas objections were filed to the allowance of these assigned securities, on the ground that the assignment to the bank was invalid under Section 3477 of the Revised Statutes of the United States and that the claims assigned belonged to the creditors of the bankrupt generally; and,

Whereas, on further proceedings in that cause the District Court aforesaid did deny to the bank its right to such assignment, and did, while approving said bank's claim as a debt, disallow and reject its right and claim to the securities assigned aforesaid; and,

Whereas, on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, such order of the District Court was on May 11, 1908, affirmed, on the ground that the assignment of the claims as security was invalid under Section 3477 aforesaid; and,

Whereas the aforesaid bank desires to appeal to the Supreme Court of the United States from the last named order and decree, and it appears that Section 3477 of the Revised Statutes aforesaid has received various interpretations throughout the United States, and that a final construction of its scope, force and intent is necessary for the proper and speedy adjudication of the estates of insolvents under the bankruptcy acts of the United States;

Now, therefore, on motion of Frederick Bausman, solicitor for appellants, This is to certify that in my opinion the determination of the question involved in the appeal aforesaid, that is to say, whether assignments of claims against the United States to creditors before insolvency, and for a valuable consideration, pass to the bankrupt's trustee in bankruptcy for the benefit of his estate generally, or whether creditors holding *bona fide* such assigned claims for a valuable consideration can retain them for their security as against the bankrupt's estate, or the bankrupt's trustee in bankruptcy, or the creditors of the bankrupt generally, is essential to a uniform construction of said bankruptcy act throughout the United States.

DAVID J. BREWER,

*Associate Justice of the Supreme Court  
of the United States.*

June 2, 1908.

(Endorsed:) Original. Docketed. No. 1528. In the United States Circuit Court of Appeals for the Ninth Circuit. The Seattle National Bank, Appellant, v. R. E. Downie, Trustee, et al., Appellees. Certificate of Associate Justice. Filed Jun- 8, 1908. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit. Bausman & Kelleher, Attorneys for Appellant. 1116-1124 Alaska Bldg., Seattle, Wash.

110 United States Circuit Court of Appeals for the Ninth Circuit.  
No. 1528.

THE SEATTLE NATIONAL BANK, a Creditor, Appellant,  
vs.

R. E. DOWNIE, Trustee; ST. PAUL & TACOMA LUMBER COMPANY,  
Barber Asphalt Paving Company, Mukilteo Lumber Company,  
Gamwell & Wheeler, Bankrupts, and National Bank of Commerce  
of Seattle, Appellees.

In the Matter of ARTHUR GAMWELL and PHILIP WHEELER, Copart-  
ners as Gamwell & Wheeler, Bankrupts.

*Certificate of Clerk U. S. Circuit Court of Appeals to Proceedings and  
Record.*

I, Frank D. Monckton, Clerk of the United States Circuit Court  
of Appeals for the Ninth Circuit, do hereby certify the foregoing  
thirty-three (33) pages, numbered from one (1) to thirty-three (33),  
inclusive, to be a true copy of the Assignment of Errors and of all  
proceedings had in the above-entitled case in the said the United  
States Circuit Court of Appeals for the Ninth Circuit, including the  
Opinion filed therein as the same remain and appear of record in  
my office, and that the same in connection with the preceding certi-  
fied copy of the printed Transcript of Record constitute a true copy  
of the complete record as ordered by counsel for the appellant in the  
above-entitled case and the Transcript of Record therein upon appeal  
to the Supreme Court of the United States.

111 Attest my hand and the seal of the said the United States  
Circuit Court of Appeals for the Ninth Circuit in the City of  
San Francisco, in the State of California, this twenty-sixth day of  
June, A. D. 1908.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

112 In the Supreme Court of the United States.

No. —.

THE SEATTLE NATIONAL BANK, Appellant,

v.

R. E. DOWNIE, Trustee; ST. PAUL & TACOMA LUMBER COMPANY,  
Barber Asphalt Paving Company, Mukilteo Lumber Company,  
Gamwell & Wheeler, Bankrupts, and National Bank of Commerce  
of Seattle, Appellees.

*Citation on Appeal.*

The United States of America to R. E. Downie, Trustee; St. Paul  
& Tacoma Lumber Company, Barber Asphalt Paving Company,  
Mukilteo Lumber Company, Gamwell & Wheeler, Bankrupts, and  
to National Bank of Commerce of Seattle, Greeting:

You are hereby cited and admonished to be and appear at a session  
of the Supreme Court of the United States to be held at the city of

Washington within sixty days after the date of this citation, pursuant to a petition on appeal and an assignment of errors filed in the clerk's office of the United States Circuit Court of Appeals for the Ninth Circuit, in a certain cause therein, in which The Seattle National Bank was appellant and R. E. Downie and others appellees, and which cause is numbered 1528, to show cause, if any there be, why the decision and decree of said Circuit Court of Appeals, filed in its clerk's office May 11, 1908, affirming the order of the District Court of the United States for the Western District of Washington, and disallowing the claim of The Seattle National Bank as in the petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 1 day of June, 1908.

WM. W. MORROW,  
*Circuit Judge.*

- 113 Copy of the within Citation on Appeal received and service acknowledged this 5th day of June, 1908. •

G. E. DE STEIGUER,

*Attorney for National Bank of Commerce of Seattle.*

KERR & McCORD,

*Attorneys for R. E. Downie, Trustee, and  
Gamewell & Wheeler, Bankrupts.*

COOLEY & HORAN,

PETERS & POWELL,

*Attorneys for Mukilteo Lumber Company, St. Paul &  
Tacoma Lumber Company, and Barber Asphalt  
Paving Company.*

- 114 [Endorsed:] Original. Docketed. No. 1528. In the Supreme Court of the United States. The Seattle National Bank, Appellant, v. R. E. Downie, Trustee, et al., Appellees. Citation on Appeal. Filed Jun- 12 1908. F. D. Monckton, Clerk U. S. Circuit of Appeals, for the Ninth Circuit. Bausman & Kelleher, Attorneys for Appellant, 1116-1124 Alaska Bldg., Seattle, Wash., at which office they consent that service of all subsequent papers, except writs and processes, may be made upon them.

Endorsed on cover. File No. 21,266. U. S. Circuit Court Appeals, 9th Circuit. Term No. 204. The Seattle National Bank, appellant, vs. R. E. Downie, trustee; St. Paul & Tacoma Lumber Company, et al. Filed July 20th, 1908. File No. 21,266.

# In the Supreme Court of the United States

OCTOBER TERM, 1909

THE NATIONAL BANK OF COMMERCE OF  
SEATTLE,

*Appellant,*

*vs.*

R. E. DOWNIE, Trustee; ST. PAUL & TACOMA  
LUMBER COMPANY, BARBER ASPHALT PAVING  
COMPANY, MUKILTEO LUMBER COMPANY, GAM-  
WELL & WHEELER, Bankrupts, and the SEATTLE  
NATIONAL BANK,

*Respondents.*

No. 203

THE SEATTLE NATIONAL BANK OF SE-  
ATTLE,

*Appellant,*

*vs.*

R. E. DOWNIE, Trustee; ST. PAUL & TACOMA  
LUMBER COMPANY, BARBER ASPHALT PAVING  
COMPANY, MUKILTEO LUMBER COMPANY, GAM-  
WELL & WHEELER, Bankrupts, and NATIONAL  
BANK OF COMMERCE OF SEATTLE,

*Respondents.*

No. 204

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE NINTH CIRCUIT

## Brief of Appellants

GEORGE E. DE STEIGUER,

*Solicitor for The National Bank of Commerce, of Seattle.*

FREDERICK BAUSMAN and

DANIEL KELLEHER,

*Solicitors for The Seattle National Bank.*

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# In the Supreme Court of the United States

OCTOBER TERM, 1909

THE NATIONAL BANK OF COMMERCE OF  
SEATTLE,

*Appellant,*

*vs.*

R. E. DOWNIE, Trustee; ST. PAUL & TACOMA  
LUMBER COMPANY, BARBER ASPHALT PAVING  
COMPANY, MUKILTEO LUMBER COMPANY, GAM-  
WELL & WHEELER, Bankrupts, and the SEATTLE  
NATIONAL BANK,

*Respondents.*

No. 203

THE SEATTLE NATIONAL BANK OF SE-  
ATTLE,

*Appellant,*

*vs.*

R. E. DOWNIE, Trustee; ST. PAUL & TACOMA  
LUMBER COMPANY, BARBER ASPHALT PAVING  
COMPANY, MUKILTEO LUMBER COMPANY, GAM-  
WELL & WHEELER, Bankrupts, and NATIONAL  
BANK OF COMMERCE OF SEATTLE,

*Respondents.*

No. 204

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE NINTH CIRCUIT

## Brief of Appellants

### STATEMENT OF THE CASES.

These are appeals from decrees of the Circuit Court of Appeals for the Ninth Circuit, affirming orders of the District Court, disallowing appellants' claims to preference as to certain assets in the distribution of the estate of Gamwell & Wheeler, Bankrupts.

On April 16, 1907, Arthur Gamwell and Philip Wheeler, partners as Gamwell & Wheeler, were adjudged bankrupts. (Printed Record, page 5). On the same day R. E. Downie was appointed receiver of their property. (p. 6). Thereafter he was elected and qualified as permanent trustee and by an order made June 20, 1907, was authorized to collect all sums of money owing to the bankrupts by the United States Government or any department thereof. (p. 6).

On the 4th day of June, 1907, The National Bank of Commerce of Seattle filed its claim for \$37,149.85, setting forth certain securities held by it therefor in the shape of certain claims against the United States Government for goods furnished, assigned by Gamwell & Wheeler to the bank. (p. 8 et seq.).

On the 18th day of June, 1907, the Seattle National Bank filed its claim for \$22,582.19, setting forth and annexing certain promissory notes of the bankrupts together with securities in the shape of assignments of certain bills and demands against the United States for merchandise sold and delivered to the United States government by the bankrupts. (p. 8, et seq.)

Appellees herein filed objections to the claims of preference of the banks. (No. 203, p. 30, et seq.;

No. 204, p. 18, *et seq.*) Thereafter, on the 10th day of July, 1907, the parties hereto entered into a stipulation as to said assigned claims, which, omitting title and preliminary recitals, was as follows:

"It is hereby stipulated and agreed by and between the Seattle National Bank, by Bausman & Kelleher, its attorneys; The National Bank of Commerce, by Geo. E. de Steiguer, its attorney; R. E. Downie, trustee of the above-entitled bankrupts, by Messrs. Kerr & McCord, his attorneys; the Barber Asphalt Paving Company and the Mukilteo Lumber Company by their attorneys, Peters & Powell and Cooley & Horan, that the facts in relation to the claims against the government of the United States, assigned by said bankrupts to the above mentioned banks as collateral security for the indebtedness due from said bankrupts to said banks, and to the allowance of which claims as security for such indebtedness the above-named trustee and the Barber Asphalt Paving Company and the Mukilteo Lumber Company have objected, are as follows:

"That each and all of said claims against the United States Government, so assigned, were claims for *money due from the Government of the United States to the said bankrupts* upon account of contracts entered into between said bankrupts and the United States, for the furnishing of materials by said bankrupts to various departments of said government; that said assignments were each and all voluntarily made in consideration of a loan made by said bank to said bankrupts at the time of said assignments and as collateral security for the repayment of said loans and without notice to the other creditors of said bankrupts. That all of such assignments were made after the entering into of said contracts and



after partial performance thereof by said bankrupts before the allowance of any of such claims or the ascertainment of the amount due thereon, or the issuing of any warrant for the payment thereof, and that none of said assignments were executed in the presence of any witnesses at all, and that none of them recite any warrant for the payment of the claim assigned, and that none of them were acknowledged by any officer having authority to take acknowledgments of deeds, or any other acknowledging officer at all, and that none of them were certified as being acknowledged by any officer. The said loans from each of said banks exceeded in amount the value of said collaterals so assigned to secure the same, and there is now due to each of said banks on accounts of the said loans an amount much in excess of the value of the said collaterals so assigned to each of said banks respectively. The claims of said banks and the objections thereto on file are made a part hereof." (No. 203, p. 34; No. 204, p. 21.)

The referee in bankruptcy, on the 22nd day of July, 1907, allowed the claims of the banks as secured debts. (No. 203, p. 35; No. 204, p. 23.) Thereafter the appellees herein, except the trustee, petitioned for a review of the order of the referee. (No. 203, p. 37; No. 204, p. 25.) Upon this review the judge of the district court allowed the claims of the banks as general debts, but disallowed their claims of preference. (No. 203, pp. 40-42; No. 204, p. 27.)

The National Bank of Commerce of Seattle and The Seattle National Bank carried the cases to the Circuit Court of Appeals (No. 203, pp. 42-50; No.

204, p. 30, *et seq.*), both by appeal and by petition for review. Thereafter the Circuit Court of Appeals affirmed the decrees of the district court. (Record, No. 203, pp. 52-61; No. 204, p. 39, *et seq.*)

Thereupon these appellants severally appealed the cases to this court and secured a certificate from one of the justices thereof, that the questions involved in the appeals are essential to a uniform construction of the bankruptcy act throughout the United States. (Record, No. 203, pp 61-68; No. 204, pp. 51, 52.)

Both cases involve precisely the same questions, and by agreement of counsel both appellants join in this brief.

### SPECIFICATION OF ERROR.

The district court and thereafter the Circuit Court of Appeals erred in holding that the assignments to the banks were not valid securities, and in rejecting the appellants' claims of preference as to the assigned claims and their proceeds, and in holding that appellants were only entitled to the rights of general creditors, and in holding that the proceeds of the assigned claims should be distributed among the general creditors of the bankrupts; for the reason that said assignments were made for a valuable and

present consideration, were good under the bankruptcy laws of the United States, were valid as between the parties thereto and as against the creditors of the assignors and the trustee in bankruptcy, and were not invalid under any provision of the bankruptcy law or Sections 3477 or 3737 of the Revised Statutes of the United States.

### ARGUMENT.

The sole question in this case is whether or not the trustee in bankruptcy is entitled to claim and hold the proceeds of the demands pledged to the appellants and to disregard the lien which appellants claim thereon.

This question depends upon the interpretation of the Bankruptcy Act of 1898, and especially of Sections 67d and 70a, which provide as follows:

67d: "Liens given or accepted in good faith and not in contemplation of or in fraud upon this act and for a present consideration, which have been recorded according to law, if record thereof was necessary in order to impart notice, shall not be affected by this act."

70a: "The trustee of the estate of a bankrupt, upon his appointment and qualification \* \* \* shall \* \* \* be vested by operation of law with the title of the bankrupt as of the date he was adjudged a bankrupt. \* \* \* to all \* \* \* prop-

erty which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him."

Section 67d has been held to apply to purely equitable liens, as well as to liens created by statute and common law liens.

*Chattanooga National Bank vs. Rome Iron Co.*, 102 Fed. 755;

*McDonald v. Daskam*, 116 Fed. 276;

*In re Elm Brewing Co.*, 132 Fed. 299.

An engagement to devote a certain fund to the satisfaction of a claim constitutes an equitable lien.

*Walker v. Brown*, 165 U. S. 654;

3 Pomeroy Eq. Jur., Section 1235.

The trustee in bankruptcy has contended and the court below has held that under Sec. 3477 Revised Statutes, appellants could assert no lien, legal or equitable, upon the bankrupt's claims against the United States, and that these claims passed absolutely to the trustee in bankruptcy for the benefit of general creditors.

Section 3477 is as follows:

"All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or con-

ditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney must recite the warrant for payment, and must be acknowledged by the person making them before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer at the time of the acknowledgement, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same."

It is the contention of appellants that the purpose of the section in question is limited to the protection of the government, that the statute concerns disputed "claims" only, and that if applicable at all to assignments of undisputed commercial debts due from the United States, given in the ordinary course of business, as collateral security for mercantile loans, it is not intended to affect, and does not affect, rights to the proceeds of such claims as between the assignee and the assignor or his representatives. It is the contention of appellees that under this section, assignments are nullities under all circumstances and for all purposes.

Appellees contend that this case is controlled by certain decisions of this court. The appellants, on the other hand, contend that it must be governed by certain other cases decided by this court.

The position of the appellees is, of course, supported by the decision in this case of the Circuit Court of Appeals for the Ninth Circuit and of the District Court for the Eastern District of Washington. On the other hand, as we will more fully show hereafter, our position is supported by the practice, and the construction of the statute in question, of the Executive Department of the Government, by the Supreme Judicial Court of Massachusetts, the Court of Appeals of New York, the Supreme Court of Mississippi, the Supreme Court of Appeals of Virginia, the Court of Claims, and the District Court for the District of Oregon.

The questions raised are of considerable importance to the federal government and to government contractors and the banking interests of the country.

Is a contractor to whom the Federal Government may be indebted a million dollars on undisputed bills for materials furnished unable to borrow a thousand dollars on the pledge of his expectations?

Is a contractor to whom the government may already be indebted in vast sums, and who is engaged

in works requiring millions of further outlay, unable to say to a banker: "I give you a pledge which is not good against the government, if the government choose to ignore it, but which will carry a title superior to that of others, and will protect you in the event of my bankruptcy"?

Is competition for government contracts intended to be limited to those few contracting firms who can complete their work out of their own capital, and who do not need to have recourse to the credit and banking privileges upon which ninety-five per cent of the business of the country is conducted?

Is Section 3477 to be so construed as to work not only its obvious and salutary purpose, the protection of the government against improper influences secured through the assignment of shares in disputed claims prosecuted against the government, but another effect wholly unnecessary and absolutely detrimental?

These are questions directly presented in this case.

The language of the statute, taken alone, is broad enough to extend far beyond its purpose, and render ineffective such necessary and important acts as general assignments for the benefit of creditors, and testamentary bequests.

But this court has repeatedly and wisely held that notwithstanding the broad and comprehensive language of the act, it should be given application only to such cases as fall within its purpose.

*Bailey v. The United States*, 109 U. S. 432;

*Goodman v. Niblack*, 102 U. S. 556.

We therefore come to the question, "Does public policy, or the purpose of this statute, forbid the giving of liens on payments due from the government, as between government contractors and their bankers?"

As to ordinary undisputed commercial demands against the government, we think it clear that it does not. The purpose of Section 3477 is limited to *disputed claims*, as to which the government has an interest in discouraging speculation, maintenance, champerty, and assignment to strangers. While it is plain that as to disputed claims the government has a purpose in invalidating all attempts at assignments, it is equally evident that it can have no purpose to invalidate, as between the parties, assignments or pledges of undisputed demands and liabilities, made in the ordinary course of business.

We do not contend that the pledge to this bank must be accepted by the government. The govern-



ment may utterly disregard us, and deal only with its contractors.

What we fairly contend for in our own interest, and in that of all persons having business relations with the government, is that when the controversy about a pledge or assignment lies between *second* and *third* or *third* and *fourth* parties, different classes of *creditors*, and the demands in question are *undisputed* by the government, the statute has no application, never was intended to have any application, and could not be applied without results wholly unnecessary to the government and wholly at variance with its policy of promoting the solvency, and facilitating the finances, of its contractors.

Today, in the present instance, nobody is endeavoring to enforce this pledge or assignment at all, so far as the government is concerned. Two classes of creditors are merely debating over their respective interests and priorities in such funds as are or shall come into the hands of the trustee, after they have been paid by the government.

While in several opinions this court has considered the general interpretation to be given this section, it seems that the determination of the questions now raised have not been necessary to the decision of any previous case.

Before taking up the cases in which this section has been considered by this court and by the courts of last resort of several of the states, we shall briefly review the history of this enactment.

## SECTION 3477 REVISED STATUTES.

Matter contained in this section is first found in the Act of 1846, Chapter 66 (9 Stat. at Large, 41), as follows:

### Chap. 66.—AN ACT IN RELATION TO THE PAYMENT OF CLAIMS.

*“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever a claim on the United States aforesaid shall hereafter have been allowed by a resolution or act of Congress, and thereby directed to be paid, the money shall not, nor shall any part thereof, be paid to any person or persons other than the claimant or claimants, his or their executor or executors, administrator or administrators, unless such person or persons shall produce to the proper disbursing officer a warrant of attorney executed by such claimant or claimants, executor or executors, administrator or administrators, after the enactment of the resolution or act allowing the claim; and every such warrant of attorney shall refer to such resolution or act, and expressly recite the amount allowed thereby, and shall be attested by two competent witnesses and be acknowledged by the person or persons executing it, before an officer having authority to take the acknowledgment of deeds, who shall certify such*

acknowledgment; and it shall appear by such certificate that such officer, at the time of the making of such acknowledgment, read and fully explained such warrant of attorney to the person or persons acknowledging the same.

“Approved, July 29, 1846.”

It will be noted that this act, though its title would include all “claims,” relates only to disputed, unliquidated or unauthorized claims, requiring allowance by act of Congress, and that its terms are not broad enough to include *all* disputed and unauthorized claims, since some such claims may be prosecuted before the departments, or before the Court of Claims.

In 1852, while a congressional investigation of various frauds against the treasury was under consideration (Senate Reports No. 1, 33d Congress, Special Session, 1853, Vol. 1, pp. 1 to 216), a bill was introduced under the title: “An Amendment of the Act of 1846, Chap. 66,” and this was later amended and passed in the following form in 1853, its title having been changed to

Chap. 81.—AN ACT TO PREVENT FRAUDS UPON THE  
TREASURY OF THE UNITED STATES.

Thirty-second Congress, Sess. II., Ch. 81, 1853,  
10 Stat. at Large 170:

*“Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That all transfers and assignments hereafter made of any claim upon the United States, or any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or any part or share thereof, shall be absolutely null and void, unless the same shall be freely made and executed in the presence of at least two attesting witnesses, after the allowance of such claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof.*

*“Sec. 2. And be it further enacted, That any officer of the United States, or person holding any place of trust or profit, or discharging any official function under, or in connection with, any executive department of the Government of the United States, or under the Senate or House of Representatives of the United States, who, after the passage of this act, shall act as an agent or attorney for prosecuting any claim against the United States, or shall in any manner, or by any means, otherwise than in the discharge of his proper official duties, aid or assist in the prosecution or support of any such claim or claims, or shall receive any gratuity, or any share of or interest in any claim from any claimant against the United States, with intent to aid or assist, or in consideration*

of having aided or assisted, in the prosecution of such claim, shall be liable to indictment, as for a misdemeanor, in any court of the United States having jurisdiction thereof, and, on conviction, shall pay a fine not exceeding five thousand dollars, or suffer imprisonment in the penitentiary not exceeding one year, or both, as the court in its discretion shall adjudge.

“Sec. 3. *And be it further enacted*, That any Senator or Representative in Congress who, after the passage of this act, shall, for compensation paid or to be paid, certain or contingent, act as agent or attorney for prosecuting any claim or claims against the United States, or shall in any manner or by any means for such compensation aid or assist in the prosecution or support of any such claim or claims, or shall receive any gratuity, or any share of or interest in any claim from any claimant against the United States, with intent to aid or assist, or in consideration of having aided or assisted in the prosecution of such claim, shall be liable to indictment as for a misdemeanor in any court of the United States having jurisdiction thereof, and, on conviction, shall pay a fine not exceeding five thousand dollars, or suffer imprisonment in the penitentiary not exceeding one year, or both, as the court in its discretion shall adjudge.

“Sec. 4. *And be it further enacted*, That any person who shall wilfully and knowingly destroy, or attempt to destroy, or with intent to steal or destroy, shall take and carry away any record, paper, or proceeding of a court of justice, filed or deposited with any clerk or officer of such court, or any paper or document or record filed or deposited in any public office, or with any judicial or public officer, shall, without reference to the value of the record, paper, document, or proceeding, so taken, be deemed guilty of felony, and on conviction in any court of the

United States having jurisdiction thereof, shall pay a fine not exceeding two thousand dollars, or suffer imprisonment in a penitentiary not exceeding three years, or both, as the court in its discretion shall adjudge.

“Sec. 5. *And be it further enacted*, That any officer having the custody of any record, document, paper, or proceeding specified in the last preceding section of this act, who shall fraudulently take away, or withdraw, or destroy any such record, document, paper, or proceeding filed in his office or deposited with him, or in his custody, shall be deemed guilty of felony, and on conviction in any court of the United States having jurisdiction thereof, shall pay a fine not exceeding two thousand dollars, or suffer imprisonment in a penitentiary not exceeding three years, or both, as the court in its discretion shall adjudge, and shall forfeit his office and be forever afterwards disqualified from holding any office under the Government of the United States.”

Section 6 relates to penalty for bribing or unduly influencing members of Congress.

“Sec. 7. *And be it further enacted*, That the provisions of this act, and of the act of July twenty-ninth, eighteen hundred and forty-six, entitled ‘An act in relation to the payment of claims,’ shall apply and extend to all claims against the United States, whether allowed by special acts of Congress, or arising under general laws or treaties, or in any other manner whatever.

“Sec. 8. *And be it further enacted*, That nothing in the second and third sections of this act contained shall be construed to apply to the prosecution or defense of any action or suit in any judicial court of the United States.

“Approved, February 26, 1853.”

Section 1 above constitutes the first part of Section 3477, while the last part of that section is taken from Chapter 66 of the Acts of 1846.

The debates in Congress on this measure (pp. 64, 67 and 216 Appendix Cong. Globe, Vol. 2, Second Session, 32d Congress, 1852-3), as well as the title of the act, indicate that the sole intent of Congress was the prevention in future of frauds such as those then under investigation, that is to say, frauds through the assignment of interests in disputed, doubtful and groundless claims to lobbyists, attorneys, members of Congress, and government officials, in order to improperly influence the allowance of such claims by Congress or by the departments.

Howsoever broad its language, this was the purpose of the act and the scope of its application in the mind of the Congress that enacted it.

#### WHAT WAS ITS CONTEMPORARY INTERPRETATION BY THE EXECUTIVE DEPARTMENT?

That same year, 1853, the first comptroller issued a circular for the guidance of the officials of the government, in which he announced that the act of 1853 does not include *undisputed* claims. We have

not had an opportunity to examine this circular, but its existence and provisions are referred to in the opinion of Attorney-General Brewster hereinafter quoted.

The interpretation adopted in this circular appears to have been steadily adhered to by the executive department of the government from 1853 to the present time. *Freedmen's Savings & Trust Co. v. Shepherd*, 127 U. S. 494, and numerous other cases which have come before this court show the acceptance of assignments of undisputed claims.

In 1883, several cases involving the application of this section having arisen, the matter was submitted to Attorney-General Brewster, for whom a very painstaking and thorough investigation appears to have been made by the then solicitor-general, S. F. Phillips, the results reached being embodied in the following opinion of the Attorney-General, which we print in full as a statement and explanation of the interpretation, application, and enforcement given to this act by the executive department through the fifty-seven years which have elapsed since its enactment:

(The italics are those of the solicitor-general.)

Vol. 17 Opinions of Attorneys General, page 545:



## CLAIMS AGAINST THE UNITED STATES.

*“The provisions of Section 3477, Revised Statutes, touching transfers and assignments of claims against the United States, and powers of attorney, etc., for receiving payment thereof, do not apply to undisputed claims, or any claim about which no question is made as to its validity or extent.*

*“Where a contract was made for roofing a courthouse at a fixed price, and a power of attorney given to receive a part of such price as security for material purchased by the contractor: Advised that the power was not affected by Section 3477, as no doubt existed concerning the right of the contractor to receive the amount so secured.”*

## DEPARTMENT OF JUSTICE.

May 28, 1883.

“SIR: Yours of the 3d of February last asks whether the word ‘claim’ in Section 3477 of the Revised Statutes includes claims against the United States that are *liquidated* as well as those that are *unliquidated* and in this connection three cases are stated as illustrating the question pending before you.

“The provision in Section 3477 to which you refer is as follows: ‘All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a

claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof.'

"The expression 'claim,' as is well known, is one of the most comprehensive in the vocabulary of the law. The only question here, therefore, is how far the purview or the history of the above statute indicates that this word is employed therein in some, and if so what, more narrow sense.

"The above passage comes originally from the act of 1853, chapter 81, and it remains in the words in which it was first introduced by Mr. Badger, in April, 1852, at the Congress preceding that in which it became a law. (Globe, Vol. XXIV, part 2, pp. 984, 1128.) Its author was well known as an eminent lawyer, and an especially skillful draughtsman. Originally the bill which contained it was entitled 'An amendment of the act of 1846, chapter 66.' When taken up at the next Congress its scope was somewhat enlarged, and the title changed. However, its connection with the act of 1846 remained apparent in the body thereof.

"The act of 1846 regulated assignments, etc., of such claims as are *allowed by Congress*. Upon its passage through the House of Representatives it seems to have been under the charge of Mr. Thurman, but there is no report of debate in either house, so far as I have found. It is a part of extensive legislation upon matters of finance, which distinguishes that year, and its promise of benefit was probably universally admitted.

"When first introduced Mr. Badger's bill made void not only all assignments and powers of attorney affecting claims, but likewise *all contracts whatever for compensation to claim agents*. At its second appearance this latter provision was omitted (Globe, Vol. XXVI, pp. 242, 288.) The legislature there-

fore *deliberately* refused to interfere in the matter of compensation as between claimants and their agents, excepting so far as the compensation operated *in rem*. It is in conformity with this principle that the act of 1853 specifies *protection of the United States* against fraud as its *sole purpose*. It should be added that such second appearance was because of its adoption by a special committee of the House, theretofore raised to inquire about and report upon the *Gardiner claim*, at that time so notorious.

“By its connection with the act of 1846, therefore, as well as by that with the Gardiner claim, and by its significant omission above mentioned, the act of 1853 reminds the reader of the common law policy against *maintenance* and *champerty*; and this suggestion is strengthened by the title at length adopted, which in turn finds an analogy in the circumstance that the offenders just named are rated at common law with that class which affects *public justice*, irrespective of any injury to such private persons as are incidentally oppressed thereby.

“Another circumstance to the same effect is to be found in the clause (above) ‘whatever may be the consideration therefor,’ which probably originated in the fact that this doctrine as to the ‘consideration’ necessary to constitute common law champerty, i. e., *maintenance of the suit*, was regarded as too narrow for public exigencies in 1852-53. I submit that this clause is an *ear-mark*, indicating that the legislature assumed the common law as to champerty as a point of departure, and so was under an impression, and intended that, except as expressly otherwise provided, that department of the common law would give the rule for interpreting the statute in parts analogous.

“To the same general effect is the exact enumeration by the statute of the circumstances under which

alone assignments and powers of attorney are therein authorized; viz., 'allowance,' 'ascertainment,' and 'warrant for the payment.' I submit that the former words are *emphatic*. If they are not emphatic they are *superfluous*, for all 'warrants for payment' are *necessarily* preceded by either or both; and where not by both, the above enumeration is of course to be taken distributively. But in any case if the specification of *allowance* and *ascertainment* is not *ex industria*, it is *surplusage*; a conclusion which, of course, is not to be drawn if reasonably to be avoided. If they are emphatic, this feature coincides with the others just mentioned in showing that *a general atmosphere or color derived from the doctrines of champerty affects the topics before us*. I mean that some sort of *litigation* of the 'claim,' either in Congress or before an executive department, is taken for granted. There may be no *technical difference* between the respective methods for the payment of the salary of a United States judge, and for that of a claim which in the event undergoes a course of several years' litigation in the treasury department. But for some purposes there is an important difference, and that not only as to the means of success employed by such as are attorneys to collect them. In point of fact where the United States are clearly debtors as claimed, the matters preliminary to warrant for payment amount to no more than a presentment of a promissory note to the debtor himself; but when doubt arises upon the claim, the officers of the treasury assume consciously *judicial* functions; the affair loses its *pro forma ex parte* character, sides are taken by the creditor and debtor, and the auditors, comptrollers, etc., act as if inquiring into a question *inter alios*. Such also as this latter kind of proceeding is that where no law exists to authorize payment, and an application to Congress for private legislation becomes necessary. It is not singular, therefore, or

merely casual, that section 3477, which is compounded of the acts of 1846 and 1853, should in accordance with a marked trait in Anglo-Saxon legislation show upon its face that it deals with a specific evil to which the attention of Congress had actually at the time been drawn, and is not meant as an abstract and universal statutory provision shaped by square and compass, or as broad, say, as the word 'clameum,' spoken of by Coke as the most comprehensive in the law.

"Comprehensiveness in meaning is not infrequently akin to vagueness and consequently to obscurity; so that it is not unusual for interpreters of legal documents to color or restrain general terms occurring therein by *specific* words associated therewith, or by matters connected with their history. In the present instance, as has been shown, we may bring both of these influences to bear.

"In this connection it is significant that a subsequent clause in section 3477 *expressly excludes the conclusion* that the phrase 'all transfers' therein means less than 'all,' whilst there is no such pains taken with the adjoining phrase, 'any claim.' Apparently, then, the latter is left of purpose to such color as the context, etc., may suggest.

"It is also pertinent to the general question to observe that the second section of the act of 1853 made it indictable for officers of the United States to 'prosecute any claim' as agent or attorney. I take it that 'prosecution' in this place denotes any method by which 'a claim' may be recovered; and therefore that it varies *secundum subjectam materiam* of the class of claims to which it may be actually applied. If the word claim here is to have the meaning assigned by Coke, then for one class *presentation* thereof is *prosecution*, and a public officer would become indictable if in behalf of an absent friend he were to present to

the treasury, even without compensation, any account against the United States, no matter how plainly due. But I apprehend that the expression *prosecute* gives the same color to the word *claim* in this second section that in the first is reflected from the matters above suggested, and so that it aids in showing that Congress was thinking of, and except as actually therein otherwise expressed was guided by, the ancient policy as to *champerty*.

“It is therefore pertinent to observe here that at common law it is not champerty to stipulate for a share in collecting a debt (from *ex gra.*, some distant debtor) by a mere presentation thereof. For that effect it is necessary that there should be, as the books say, a *quarrel* or *taking of sides* about the debt by the parties thereto. If no such dispute exists, either in pais or in court, compensation to a proposed collector is allowable. And even in case of suit in court it is ‘certain that the assignee of a bond or other chose in action, being made over to him for good consideration in satisfaction of a precedent debt, and not merely in consideration of the intended maintenance,’ is not champerty. *Hawkins* (Book 1, chapter 83, sec. 17), and others. That is even where there is *litigation*, unless there is also a *particular sort of consideration*, assignments of the kind just mentioned are not invalid at common law. We have seen that section 3477, following the statute of 1853, has expressly changed this rule so far as regards *consideration*. And, as already submitted, that exception concurring with other indications to the same effect *proves the rule* in other respects, and consequently that section still contemplates the existence of *litigation* (i. e., some virtual *quarrel* or *sides-taking* betwixt the supposed original creditor and the United States) in order to constitute such a claim as is within its provisions.

“Considerations arising from the history of a statute are of course most apt to occur to those who may be called to administer its provisions *contemporaneously*. In the present case, therefore, it is interesting to observe that contemporaneously the First Comptroller issued a circular in which he announced, as a rule of action in settling demands against the government, that the act of 1853 did not include *undisputed* claims.

“I have carefully read the cases in the Supreme Court of the United States reported in 95 U. S. 407, 97 ib. 392, 484, and 102 ib. 556, and understand that the views above expressed do not conflict with anything there decided.

“I have also attentively considered the opinion in Spaid’s case (16 Opin. 161) to which you refer. There a questionable power of attorney *had been revoked*, and, as no *interest* was connected with the power, there was little difficulty in holding that the latter was at an end—and so Attorney General Devens said; but he added, by the way, that the power itself (to collect installments from time to time upon a contract to dredge a river) was in violation of Section 3477, and so had never been valid. It is important to say that *no question upon that point had been asked of him*, and from the passage quoted by you (16 Opin., page 263) in regard to ‘concurrence,’ as well as upon the whole face of the opinion, it is doubtful whether that learned and able lawyer had thoroughly considered either the foundation or the effect of this *dictum*.

“I hope to be understood upon the whole as advising that Section 3477 does not apply to any claim against the United States about which no question is made as to its authority or extent. By ‘question,’ I mean, of course, question by some officer lawfully authorized in that behalf.

“It seems, therefore, that the policy of the above section forbids that an *assignee or attorney as to the proceeds of an executory contract* (*ex gra.*, for building, dredging, etc.) shall have more than an uncertain interest therein, i. e., one contingent upon the absence of any subsequent question by the United States as regards any matter which at the time of the question is in the future—such as the amount or quality of the article to be paid for.

“It is hardly necessary to add that nothing in this discussion, or in Section 3477, touches those claims against the United States that arise upon instruments, such as bonds, etc., the transfer, commercial character, etc., of which have been provided for by special legislation.

“To apply the above conclusion to the particular cases which you mention as pending before you:

“(1) In Jones’ case a contract has been made for roofing a court house at a fixed price, and a power of attorney to receive a part of such price has been given as security for material purchased by the contractor.

“Inasmuch as no doubt has arisen as to the title of the contractor to receive the amount so secured, I am of the opinion that the power is not affected by Section 3477.

“(2) In Snyder’s case the circumstances are substantially the same, except that the power covers the whole price, and therefore the same result follows.

“(3) Marshbank’s case differs from those above, in that the contract is still executory. As I have said, it seems that nothing can be done at present upon the part of the United States which shall conflict with the operation of Section 3477 at any time hereafter that a demand is made for payment upon this contract, either in whole or by installment.



"If at any such time the contract is, in either of the ways suggested above, *disputed* by public officers authorized so to do, an application for payment thereunder will become a claim within Section 3477, and the power consequently void. No 'acceptance' can obviate this liability.

"Very respectfully, your obedient servant,  
S. F. PHILLIPS, Solicitor-General."

"THE SECRETARY OF THE TREASURY:

"Having examined this case and considered the above opinion, I concur with the solicitor-general in his answers to the questions propounded and in his interpretation of Section 3477 and in all of the conclusions he has arrived at and presents, and I answer as he has answered.

BENJAMIN HARRIS BREWSTER.

June 7, 1883."

Eleven years later, in the fall of 1894, this same question was submitted to Attorney-General Richard Olney. The essential portion of his opinion is as follows:

"And if it be true that Whalley & Taylor have actually assigned this debt" (an indebtedness for the balance due, amounting to \$17,000.00, for work performed as government contractors) "to Leonard and others, then upon that state of facts I concur in the views expressed in the opinion of a former solicitor-general, which are approved and adopted by the Hon. Benjamin Harris Brewster, my predecessor in office, *that such an assignment is not in violation of Section 3477, Revised Statutes.*

"Very respectfully,

"RICHARD OLNEY.

"TO THE SECRETARY OF WAR."

21 Opinions of Attorneys-General, p. 75.

See also 12 Opinions of Attorneys-General, p. 216, to the same effect.

The above opinions are not cited to this court because they are the opinions of Benjamin Harris Brewster and Richard Olney, though able lawyers both, but because they show the construction uniformly given this section by the executive department of the government, for whose protection it was enacted, an interpretation ever since relied on by bankers who have been called upon to assist government contractors and government work. These opinions clearly and squarely state and convincingly support the very same interpretation of the statute which appellants here contend for. If the construction thus adopted is wrong, unreasonable, perilous to the public treasury, or subversive of the purposes of this act, then we concede that it ought to be rejected and a sound construction adopted, regardless of the injustice and loss incidentally inflicted upon individuals who have relied upon the construction heretofore current.

But if the construction adopted, and which we contend for, is reasonable and consistent with the carrying out of the purpose of this act, then we say that it ought not to be reversed, but ought to be adopted

and sustained by this court, even though the language of the act may be equally susceptible of some other and different construction. In this connection we rely upon the many expressions of this court to the effect that great weight will be given to the contemporaneous construction of acts of Congress by the department of the government charged with their enforcement, especially if such construction has been long continued and has been of a nature to guide business practice and to be adopted as a rule of property; and that such interpretation will not afterward be disturbed by this court unless it is grossly and palpably wrong and contrary to justice or to the public interest.

The interpretation of this statute as one aimed at evils of the nature of champerty and maintenance is supported by many expressions of this court, and is, we believe, the only construction of the statute with which *all previous decisions of this court can be reconciled*.

In 1853, the year this act was passed, this court first had occasion to discuss it, and its *contemporaneous interpretation* of the act seems to have been the same as the contemporary interpretation given it by the executive arm of the government, for

Mr. Justice Grier says. speaking for the court, and evidently having reference to section one of the act:

“This act annuls all *champertous contracts* with agents of private claims.”

*Marshall v. Railroad Co.*, 16 How. 336.

Again, in *Spofford v. Kirk*, the case principally relied on by appellees, this court refers to the *danger* apprehended by Congress from the assignment of interests *to gain influence* “*in the prosecution of claims which might have no real foundation, of which the facts of the present case afford an illustration.*”

In *Freedmen's Savings & Trust Co. v. Shepherd*, 127 U. S. 494, 32 L. Ed. 163, the court considers a case involving an assignment of a different sort of demand, not a disputed or litigated or groundless “claim,” but a recognized current business obligation of the government. The court here takes a very different attitude toward the assignment from that which it has taken in dealing with champertous assignments of disputed claims, and substantially makes the distinction which we now contend for. On this state of facts, the court, speaking by Mr. Justice Harlan, says:

“Undoubtedly, the lease made by Bradley to the United States created in his favor what, *in some sense*, was a ‘claim upon the United States’ for each

year's rent as it fell due. And, *if the statute embraces a claim of such a character*, there could not have been any valid transfer or assignment of it in advance of its allowance, which could have been made the basis of a suit by the assignee against the United States, or which would compel the government to recognize the transfer or assignment. It is, perhaps, also true that, under some circumstances, the assignor, before the allowance of the claim and the issuing of the warrant, may disregard such an assignment altogether.

“But when the government ascertained the amount of rent due under Bradley's lease, and, with his consent, allowed the same to him for the use of Shepherd, for the use of Taylor, Bacon and Cross, trustees, we perceive nothing in the words or the policy of the statute preventing Thompson from asserting his rights either against the parties, or any of them, named in the warrants issued by the government, or against the trust company, the mortgagee of the premises. The object of the statute, as was said in *Bailey v. U. S.*, 109 U. S. 432, was to protect the government and not the claimant, and to prevent frauds upon the treasury; and an ‘effectual means to that end was *to authorize the officers of the government to disregard any assignment or transfer of the claim*, or any power of attorney to collect it, unless made or executed after the allowance of the claim, the ascertainment of the amount due thereon, and the issuing of the warrant for the payment thereof.’ Here, the officers of the government chose to recognize the assignment, and of their action neither Bradley nor Shepherd, nor Shepherd's trustees, can rightfully complain. The government is acquitted of any liability in respect to the claim for rent, for its officers have acted in conformity with the directions, not only of the original claimant, but of his assignee, Shepherd, and of Shepherd's trustees.

*The simple question is whether the money received from the government shall be diverted from the purpose to which Bradley, Shepherd and Shepherd's trustees agreed in writing that it should be devoted, namely, to the payment of the debts Thompson holds against Shepherd. This question must be answered in the negative; and in so adjudging we do not contravene the letter or the spirit of the statute relating to the assignment of claims upon the United States."*

This language and decision are consistent with only one construction of this statute, the construction adopted by the departments and contended for now by appellants. The decision seems to us conclusive of the case at bar.

In *Ball v. Halsell*, 161 U. S. 72, 16 Supreme Court Reporter 554, this court says:

"The legislation shows that the intent of Congress was that the assignment of naked claims against the government for the purpose of suit, or in view of litigation, or otherwise, should not be countenanced at common law. At common law, the transfer of a mere right to recover in an action at law was forbidden, as violating the rule against maintenance and champerty; and, although the rigor of that rule has been relaxed, an assignment of a chose in action will not be sanctioned when it is opposed to any rule of law of public policy; citing *Hager v. Swayne*, 149 U. S. 242, 247, 248, 13 Sup. Ct. 841."

In *Goodman v. Niblack*, 102 U. S. 556, 560, where the question was whether the above statute embraced a voluntary assignment for the benefit of creditors,

by which the plaintiff therein (the only creditor claiming under the assignment) was given a preference, this court, referring to *Erwin v. U. S.*, said:

“The language of the statute, ‘all transfers and assignments of any claim upon the United States, or of any part thereof, or any interest therein,’ is broad enough (*if such were the purpose of congress*) to include transfers by operation of law, or by will. Yet we held it did not include a transfer by operation of law, or in bankruptcy, and we said it did not include one by will. *The obvious reasons of this is that there can be no purpose in such cases to harass the government by multiplying the number of persons with whom it has to deal, nor any danger of enlisting improper influences in advocacy of the claim, and that the exigencies of the party who held it justified and required the transfer that was made.* In what respect does the voluntary assignment for the benefit of his creditors, which is made by an insolvent of all his effects, which must, if it be honest, include a claim against the government, differ from the assignment which is made in bankruptcy? *There can here be no intent to bring improper means to bear in establishing the claim, and it is not perceived how the government can be embarrassed by such an assignment. The claim is not specifically mentioned, and is obviously included only for the just and proper purpose of appropriating the whole of his effects to the payment of all his debts. We cannot believe that such a meritorious act as this comes within the evil which congress sought to suppress by the act of 1853.*”

In *Price v. Forrest*, 173 U. S. 410, 19 Sup. Ct. 438, this court, in the course of reviewing the cases, quotes the above language, and says:

"The doctrine of these cases has not been modified by any subsequent decision. \* \* \* As this court has said, the object of congress, by Section 3477, was to protect the government, and not the claimant, and to prevent frauds upon the treasury. *Bailey v. U. S.*, 109 U. S. 432, 3 Sup. Ct. 272; *Hobbs. v. McLean*, 117 U. S. 576, 6 Sup. Ct. 870; *Trust Co. v. Shepherd*, 127 U. S. 494, 506, 8 Sup. Ct. 1250. *There was no purpose to aid those who had claims for money against the United States in disregarding the just demands of their creditors. We perceive nothing in the words or object of the statute that prevents any court of competent jurisdiction, as to subject-matter and parties, from making such orders as may be necessary or appropriate to prevent one who has a claim for money against the government from withdrawing the proceeds of such claim from the reach of his creditors; provided such orders do not interfere with the examination and allowance or rejection of such claim by the proper officers of the government, nor in any wise obstruct any action that such officers may legally take under the statutes relating to the allowance or payment of claims against the United States. If a court, in an action against such claimant by one of his creditors should, for the protection of the creditor, forbid the claimant from collecting his demand except through a receiver, who should hold the proceeds subject to be disposed of according to law under the order of court, we are unable to say that such action would be inconsistent with Section 3477."*

In *Dowell v. Cardwell*, 4 Sawr. 217, Fed. Cas. 4039, this statute is considered and held applicable only to disputed, litigated or unrecognized claims, the court stating its interpretation of the statute as follows:



“But my impression is that the section is not applicable to any of these claims. In my judgment ‘a claim upon the United States’ is something in the nature of a demand for damages arising out of some alleged act or omission of the government, not yet provided for, or acknowledged by law. As the term imports, it is something asked for or demanded on the one hand and not admitted or allowed on the other. Worcester and Bouvier, verba ‘Claim.’ When the demand is admitted, authorized or provided for by law it is not a mere claim, but a debt. It no longer rests in mere clamor or petition, but is something due upon which an action may be maintained.

“By the acts of 1854 and 1871, *supra*, it was provided that these claims should be adjusted on ‘just and equitable principles’ and paid accordingly. Thereafter, if not before, they were debts and not mere claims.” \* \* \*

\* \* \* “Even if the case was within the statute as between the parties and the United States, Griswold, having obtained this money in violation of or contrary to it, ought not to be allowed to set it up in this suit to prevent the plaintiff from recovering that portion of it which in equity belongs to him.”

We have considered heretofore one aspect of this case only: whether or not the statute applies to undisputed obligations of the government. If it does not, appellants are entitled to priority, since the demands assigned were for current sales of goods there-

tofore delivered to the government (Record, No. 204, p. 10 et seq.), and were for money "due from the Government of the United States to said bankrupts" (Stipulation of Facts, Record, No. 203, p. 34; No. 204, p. 22). As the record shows, there was never any suggestion of any dispute of the claims on the part of the United States. Of course, even without the stipulation, the assignments are good in the absence of evidence that they fall within the class of "Claims" affected by the statute.

If the statute be held to apply to undisputed obligations, several further questions arise.

Does the statute render such assignments as we are considering *void for all purposes*, or only void or voidable so far as the United States is concerned?

Does the statute apply at all to mere pledges or assignments as security for mercantile loans?

If the statute renders such assignments void and ineffective so far as the transfer of the legal title is concerned, even between the parties, is not a trust or equitable pledge created?

Are not assignments under such circumstances to be construed as agreements to appropriate the proceeds of the claims to the repayment of the loans for which they are pledged?

Are not the equities of the appellants, who have enriched the estate in reliance on this security, entitled to the protection of a court of bankruptcy, regardless of their enforceability by ordinary suit?

Do not the assignments in question fall within the spirit of the exception heretofore established by this court in favor of assignments for the benefit of creditors, whether voluntary or involuntary, and whether for the general benefit of all creditors, or giving a preference to one creditor, as in *Goodman v. Niblack, supra*?

If Gamwell & Wheeler had had no creditors but the bank, and no assets but their demands against the government, would an assignment in the form of a general assignment for the benefit of creditors have been effective to give a lien, but a specific assignment of the very same demands, ineffective? Would an assignment for the benefit of their creditors generally, with a preference to the bank, have been effective, but separate equitable pledges, enabling these contractors to keep on their feet and fulfill their contracts with the government, ineffective? Is it to be announced that a government contractor, desirous to protect creditors who have advanced him funds in reliance upon his contracts

and in order to enable him to fulfil them, can only protect those creditors in their just rights by financial suicide, with its incident destruction of his power to continue the fulfilment of his government contracts?

The glaring fact which stands out in the midst of all discussion of this subject is that the statute *could not have been intended to apply to such a case as that at bar*, and that to avoid such inequity and senseless damage to government and contractor alike, some other interpretation must be sought.

The last Massachusetts case and the New York cases which we shall cite are rested on a construction of the statute which gives it effect only at the election of and in favor of the United States, leaving all assignments valid and binding as between the parties and their successors or assigns. We do not oppose this construction of the statute. Perhaps it is the correct one. It sustains our case and goes further than is necessary to sustain our case. But we ourselves think that the most sound and satisfactory construction is that which we have heretofore discussed, which reconciles the several decisions of this court. This is the contemporary interpretation of the

act, adopted into the practice of the departments; it conforms with the intention of the congress; it remedies the evils intended, and it avoids all unnecessary interference with legitimate business needs. The construction appellees contend for would place further and useless difficulties in the way of filling government contracts; would hamper the federal government in dealing with its contractors, and would, through the narrowing competition, enhance the prices which the government must pay for supplies, without the slightest compensating public advantage.

We will briefly consider the other possible interpretations of this act in our further discussion of the cases.

#### IS THE ACT APPLICABLE TO MERE COLLATERAL SECURITY FOR LOANS?

As we have seen, the sole purpose of this statute is the prevention of frauds against the United States through the enlistment of improper influences to aid in their prosecution. Do assignments or pledges given to secure mercantile loans fall within its terms as limited by its purpose?

The act does not *eo nomine* forbid the pledge of a claim or its proceeds as security to a creditor.

Such a pledge, an assignment only in name, since it is not intended to be enforced against the United States, could not be used as a means of enlisting improper influences in aid of the claim. It only secures to the pledgee the amount of the pledgor's indebtedness to him. This interpretation of the statute would not operate to allow a claimant to grant or *donate* any further share or interest in his claim, which might then become an inducement to the exertion of influences in his behalf. To construe the statute as including and denouncing pledges given as security for *bona fide* mercantile loans in aid of the solvency of contractors and the fulfilment of contracts would, if this act be held to have any application at all to current undisputed demands, be a serious blow against economy, speed and efficiency in the execution of government undertakings. It would be disastrous to contractors who require loans in order to enable themselves to carry out their contracts with the government, their alternative, if the government says that such security as they can offer is worthless, being either failure to fulfil their contracts, or useless and senseless delay, harmful alike to the government and to the contractor, while awaiting the liquidation of already matured demands against the United States.

These are serious considerations, for it is not to be lightly presumed that congress intended to uselessly and unnecessarily hamper the government, impair its efficiency, and lessen its opportunity for economy by proscribing and nullifying *between the parties* the only security a government contractor can offer for advances necessary to enable him to fulfil his contracts. There is a very strong presumption that congress never intended this, and the presumption can only be overcome by language that *admits of no other reasonable interpretation*. Is such language used in the act? Far from it. The language used never mentions *loans* or *securities*, never mentions *debts*, *demands* or *obligations*, but deals solely with "claims," "bribery," "undue influence," "prosecution of claims," and dealings between litigants, claimants, lobbyists, and the government and government officers.

The act forbids, it is true, the assignment of "any interest" in such claims, but it is very plain that the interest referred to is a share or percentage in an expectancy—a part interest in a disputed demand, to be forced or insinuated into the public treasury. It is obvious from the context that the equitable pledge of undisputed demands as security

for mercantile loans are not referred to by the words  
 “assignments of any *interest* therein.”

This statute has been subject to examination by  
 this court in many cases—

*Spofford v. Kirk*, 97 U. S. 484.

*United States v. Gillis*, 95 U. S. 407;

*Erwin v. United States*, 97 U. S. 392;

*Goodman v. Niblack*, 102 U. S. 556;

*Ball v. Halsell*, 161 U. S. 72;

*Freedman's Savings & Trust Co. v. Shepherd*,  
 127 U. S. 494;

*Hobbs v. McLean*, 117 U. S. 567;

*St. Paul & Duluth R. R. v. United States*, 112  
 U. S. 733;

*Bailey v. United States*, 109 U. S. 432;

*Price v. Forrest*, 173 U. S. 410;

*Nutt v. Knut*, 200 U. S. 12.

In the first case cited, *Spofford v. Kirk*, there was  
 used what has been subsequently alluded to in opin-  
 ions of this court as strong language. This language  
 must be construed with reference to the facts then  
 under consideration. The case, as is pointed out in  
*Goodman v. Niblack*, *supra*, involved the transfer  
 or assignment of a part of a disputed claim then in



controversy, on account of demands for damage for property taken by the United States army during the war, and in the opinion it was stated that the facts of the case offered an illustration of the danger of possible combinations of interests and influences in the prosecution of claims which have no real foundation.

Aside from *Spofford v. Kirk*, a decision which—or the language of which—has been later seriously qualified, the cases above referred to, in so far as it may be contended that they have any application to this case, may be grouped in three classes.

*First*, we find cases where the assignee endeavors to assert his claim against the government. To this class of cases belong *United States v. Gillis*, which concerns a disputed claim for property seized during the war, and *St. Paul & Duluth R. R. Company v. United States*, involving a disputed claim for additional compensation for carrying the mails, denied by the postoffice department. In these cases it appears, both from the title and from the facts stated, that the controversy was between the assignee and the government; and the assignments are held invalid as against the government unless the government assents thereto, it being pointed out in the *Gillis* case that claims against the United States are, as against

*the government, unassignable, in the absence of statute*, and that the special law under which that suit was brought gave a right of action only to the *owner* of the seized goods. The St. Paul & Duluth R. R. case was *decided* upon the ground that the terms of the assignment were not broad enough to carry the claim in question, regardless of the statute.

The *second* group of cases includes those wherein the consideration of the assignment is that the assignee shall intervene between the assignor and the government. These are all cases in which a contract is made for the prosecution of a disputed claim for damages against the United States, and the person undertaking its prosecution is given a lien upon, or assignment of, a portion of the fund to be collected. To this group belong *Ball. v. Halsell* and *Nutt v. Knut*. Admittedly the principal, if not the sole object of the statute in question was to prevent the enlistment of improper influence in favor of such claims against the government, and for this reason the government forbids the intervention of third parties between itself and claimants. In view of this reason for the statute, the assignments involved in these two cases were, as a matter of course, invalid. The language of these two cases will be discussed further hereafter.

The *third* group of cases includes those where the controversy is between the original claimant or his successors in interest, and the assignee, and where it was not a part of the consideration or contract of assignment that the assignee should intervene in any manner between the claimant and the government. To this class of cases belong *Goodman v. Niblack*, *Hobbs v. McLean*, *Freedman's Savings & Trust Co. v. Shepherd* and *Price v. Forrest*.

In *Goodman v. Niblack* there was under consideration the validity of a deed of assignment made by the original claimant for the benefit of his creditors, but which assignment contained certain preferences. The claims assigned appear to have been undisputed commercial demands. The controversy arose between the administrator of the original claimant and the person who claimed to be entitled to the preference, the latter being plaintiff in the suit. The lower court sustained a demurrer to the complaint. This court reversed the decree of the lower court, and in doing so Mr. Justice Miller used the following language:

"It is understood that the Circuit Court sustained the demurrer *under pressure of the strong language of the opinion in Spofford v. Kirk*. We do not think, however, that the circumstances of the present case bring it within the one then under consideration, or the principles there laid down. *That*

*was a case of the transfer or assignment of a part of a disputed claim, then in controversy, and it was clearly within all the mischiefs designed to be remedied by the statute.* Those mischiefs, as laid down in that opinion, and in the others referred to, are mainly two:

“First—The danger that the rights of the government might be embarrassed by having to deal with several persons instead of one, and by the introduction of a party who was a stranger to the original transaction.

“Second—That by a transfer of such a claim against the government to one or more persons not originally interested in it, the way might be conveniently opened to such improper influences in prosecuting the claim before the departments, the courts or the congress, as desperate cases, when the reward is contingent on success, so often suggest.

“Both these considerations, as well as a careful examination of the statute, leave no doubt that its sole purpose was to protect the government, and not the parties to the assignment.”

“We do not think the transfer to Cheever & Miles, the trustees for creditors, is forbidden by the act of 1853, or by any other principle of law or public policy.”

This is in favor of the contention there advanced by plaintiff, who forcefully argued that an intention to unnecessarily interfere with such a reasonable right as that of protecting one's creditors ought not to be attributed to congress, *if there is any reasonable escape from such construction.*

It appears in this case that the plaintiff's bill alleged that there were no other debts of Sloo, the assignor, secured by the assignment. Whatever other debts had existed had been paid, and the sole claim asserted under the assignment was the plaintiff's preferred claim of \$35,000.

In *Hobbs v. McLean*, one Peck had a contract for furnishing the government certain supplies. He had associated certain persons with him upon the agreement that after the contract was completed a settlement of profits and losses should be made on a prescribed basis. Later he gave to the two persons in question promises to pay certain amounts out of the proceeds of the contract. Peck afterwards became bankrupt and the suit involved the conflicting claims of his assignee in bankruptcy and his partners and assignees. The court decided in favor of the latter, and in doing so used the following language:

“We are of opinion that the partnership contract was not opposed to the policy of the statute. The sections under consideration were passed for protection of the government. (*Goodman v. Niblack*, 102 U. S. 556.) They were passed in order that the government might not be harassed by multiplying the number of persons with whom it had to deal, and might always know with whom it was dealing until the contract was completed and a settlement made. *Their purpose was not to dictate to the contractor*

*what he should do with the money received on his contract after the contract had been performed."*

In *Bailey v. The United States*, 109 U. S. 432, this court, after quoting from *Goodman v. Niblack* and other cases, says:

"These cases show that the statutes in question are not to be interpreted according to the literal interpretation of the words used. They show that there may be assignments or transfers of claims against the government, such, for instance, as those passed on in *Erwin v. U. S.* and *Goodman v. Niblack*, which are not forbidden by these statutes."

The case of *Freedman's Savings & Trust Co. v. Shepherd* involved conflicting claims to a certain amount due from the United States government for rent, an *undisputed current business obligation* of the government as distinguished from a disputed claim. One Thompson received an assignment thereof as collateral security. The court sustained the assignment, and as part of an elaborate discussion of this statute used the language which we have quoted on page 33 of this brief.

In *Price v. Forrest*, from which we have already quoted, the following facts, in brief appear: Price, and later his heirs, were about to receive moneys on what had been a disputed claim against the government. Forrest's administratrix

secured the appointment of a receiver to take this draft and apply it upon a judgment held by her against Price, and Price was ordered to endorse the warrant issued for the claim to the receiver. The facts, of course, are very different from those involved in this case, but the following language of the decision is significant:

“There was no purpose to aid those who had claims for money against the United States in disregarding the just demands of their creditors.”

The case of *Bailey v. United States* is important in this: It lays down the doctrine that the government may, if it desires, recognize the assignment. In other words, even as between the government and the assignee of a claim, the assignment is not absolutely void but voidable only at the option of the government.

The chief claim of the appellee seems to be that since the various decisions which we have cited as sustaining the validity of our securities, and since the decisions by the highest courts of New York, Massachusetts and Mississippi upholding this contention, this court has decided the case of *Nutt v. Knut*, and there held that the assignment was invalid. In that case it appears that an attorney was employed to prosecute a claim

of one million dollars against the United States. It was agreed that he was to receive thirty-three and one-third per cent. of the amount allowed on the claim, and of any draft, money or evidence of indebtedness which might be issued thereon. He was also appointed as an attorney in fact to sign all drafts and vouchers which might be requisite in the prosecution or collection of the claim. The Supreme Court of Mississippi, in an action brought by the attorney, sustained his claim against the administrators of the original claimant, but did not give him any lien upon the claim, and, in fact, no lien seems to have been claimed in the state court. This court affirmed the judgment of the Supreme Court of Mississippi, but in the opinion says the state court erred in holding the contract on its face to be consistent with the statute (Section 3477), though this conclusion was not necessary to the decision of the case. Nothing in this decision is inconsistent with what has been decided in the cases we have quoted from. Nothing in *Nutt v. Knut* conflicts in the slightest degree with the appellant's construction of the statute. The contract giving the attorney a lien upon the disputed claim he was there prosecuting against the United States was, as the court points out, in plain and flagrant violation of both the terms and the purpose



of the statute, a statute aimed against the evils, in the nature of maintenance, champerty and bribery, incident to assignments of interests in disputed or litigated claims against the government.

Comparing the case at bar with *Milliken v. Barrow*, 65 Fed. 888, 893, and with *Dulaney v. Scudder* (C. C. A. 5th Circuit), 94 Fed. 6, it is evident that the purpose of the statute is no more applicable in this case than in those. In each, the claimant's money has been contributed toward the *creation* of the claim on which a lien is sought to be attached. It has been paid in to keep the business in operation, and in reliance on the debt thereby created against the government, as a fund securing its payment. The *Milliken* case well points out the injustice and impolicy of cutting off such securities, though it apparently fails to notice the distinction between disputed claims and admitted debts of the government, and that between the assignment of claims to strangers, and the attaching of an equitable lien in favor of a creditor who preserves the business life of a contractor by loans on the faith of such security.

We submit that there is no justice in any line of artificial distinction between such cases as those last cited and the case at bar.

The question now raised has been considered and decided by the courts of last resort of four of the states: Massachusetts, Mississippi, New York and Virginia, and these courts have concurred in holding the statute inapplicable to such a case as that now before the court.

*Yorke v. Conde*, 147 N. Y. 486, 42 N. E. 193;

*In re Hone*, 153 N. Y. 528, 47 N. E. 798;

*Jernegan v. Osborne*, 155 Mass. 207, 29 N. E. 520;

*Thayer v. Pressey*, 175 Mass. 233, 56 N. E. 5;

*Fewell v. Surety Co. (Miss.)*, 28 Southern 755;

*Howes v. Trigg* (Va., 1909), 65 S. E. 538;

In the cases above cited, many of the decisions of this court on the subject are carefully reviewed and are regarded as supporting the conclusions reached. The opinions in *Yorke v. Conde*, *Thayer v. Pressey*, and *Howes v. Trigg*, are especially full and well considered.

It is interesting to note that the late Mr. Justice Peckham, then an associate judge of the Court of Appeals of New York, concurred in the opinion in *Yorke v. Conde*, as did Mr. Justice Holmes in the opinions rendered in *Jernegan v. Osborne* and *Thayer v. Pressey*.

The last case which has construed this statute is we believe,

*Howes v. Trigg*, 65 S. E. 538.

This case deals with a state of facts almost identical with that now under consideration, and, after a careful and painstaking review of all the decisions of this court, reaches the conclusion that a pledge of demands to a bank, as security for loans simultaneously made, creates a valid, equitable transfer (*pro tanto*) of the debt due from the United States.

In the same case, the Virginia court, going on to consider a local statute which was also drawn in question, makes the following observations, which are equally applicable to the federal statute now under consideration:

“A contrary rule would drive out of business every enterprise which was not backed by sufficient capital to meet all the demands of its current expenses as they accrued. It would make it impossible for men having a small capital successfully to engage in and conduct their business. It is essential to the existence of every mercantile, manufacturing or business enterprise to borrow money from time to time, and to do so they must be able to hypothecate as security such resources as may be under their control; and to enable them to negotiate loans to the best advantage, or to do so at all, the law must protect as far as possible commercial paper in the hands of *bona fide* holders, and be careful not to throw

doubt upon mercantile usages and the customs of business men.' "

It is thus seen that while this court is now for the first time called upon to determine the precise question whether or not the assignor of an undisputed demand against the United States which has been pledged for a contemporaneous mercantile loan of equal amount can repudiate his act and withhold the thing which he has bound himself to regard as set aside for the benefit of the pledgee, yet the decisions of this court, as well as those of the State and inferior Federal courts that have considered the question, very plainly point to the conclusion that he cannot. The distinction between admitted debts and demands, and disputed, doubtful claims and choses in action has been assumed in some cases and quite clearly pointed out in others, as, for instance, in *Goodman v. Niblack*, 102 U. S. 556.

We think that the decisions can only be reconciled, the interests of legitimate business protected, and the interests of the government in maintaining free and unrestricted competition for its contracts preserved, by holding Section 3477, a statute designed, as its title states, solely for the protection of the government against fraud, applicable only to *disputed* or *litigated* claims. Assignments

and pledges of undisputed contract debts are required by public policy, by the interests of the government, and by the interests and requirements of contractors, to be valid and binding as between the parties thereto. The interests of the government are amply protected by its own unquestioned right, even at common law, to disregard the assignment, *U. S. v. Robeson*, 9 Pet. 319; *Bonner v. U. S.*, 9 Wall. 156, and by a construction of the statute which makes such attempted assignments absolutely void as to all parties in the case of "claims" proper as distinguished from absolute debts and demands. As is ably pointed out in the opinion of Attorney-General Brewster, which we have quoted, the statute is only intended to apply to the former class of "claims" and its purpose is wholly foreign to commercial pledges and assignments of undisputed debts of the government as security for loans. "Claim" supposes debate, litigation, dispute, and the whole purpose of this section, and its context, as originally enacted, indicate that it is here so used and is not intended to be taken in its more broad signification. Were the statute to be stretched so far, it would not only extend beyond, but would defeat its object, the protection of the public treasury.

Should it be stretched to such a length, what must be the result on large government works?

Merchants and contractors whose finances are amply sufficient for the fulfilment of private contracts of similar magnitude will be prevented from competing, since a majority of merchants and contractors rely upon their ability to discount their credits and to secure financial aid from their banks on the faith of pledges which assure the banks' priority as to demands pledged, in case of bankruptcy or other financial disaster.

As we have already pointed out, such a construction of the statute, by thus greatly restricting competition for government contracts, would seriously hamper the government in all its undertakings and increase the price which it must pay its contractors.

One point yet remains to be considered, and that of a nature, if resolved in our favor, to render immaterial all the preceding discussion of this case and to require the reversal of the judgment appealed from, regardless of all other issues.

The appellants are neither plaintiffs nor defendants in any suit at law or in equity. They are claimants and petitioners seeking the allowance of their

equitable rights in a fund in a bankruptcy court. This fund is taken out of the hands of the bankrupt and administered by the court solely for the purpose of carrying out the bankrupt's financial obligations, and distributing the fund to his creditors in accordance with their just and equitable rights.

Appellants have an equitable right to reimbursement from the pledged demands, which general creditors are in no position to oppose. The latter can claim no equity in seeking to advance themselves by displacing the secured, whose loans have fed these assets.

It has been held in numerous cases that a bankruptcy court in administering an estate should regard and protect equitable liens and rights, even such as might not be enforceable by suit in law or equity.

In *In re Chase*, 59 C. C. A. 629, 631, 124 Fed. 753, 755, it appeared that the petitioners, having collected a considerable sum from sales of the bankrupt's goods, and having a lien thereon for their disbursements and charges, paid over the full amount in their possession to the trustee in bankruptcy. Thereafter they presented their claim for services and disbursements, which, it must be borne in mind, had been rendered and made in behalf of the bankrupt and at

a time prior to the institution of bankruptcy proceedings. The court held that since the petitioners *had once had* a lien on the sums which they turned over, equity required that they should be given priority, in spite of the fact that their lien, according to every rule of law and of equity, so far as administered by the courts, had been lost, saying:

“The fact that under the circumstances, the petitioners paid the trustee the gross amount received by them, and delivered them the other assets, does not, as is clearly settled, deprive them of the right to apply to the court for payment of the sums for which they once had a lien. It is settled that a trustee in bankruptcy has no equities greater than those of the bankrupt, and that he will be ordered to do full justice, *even in some cases where the circumstances would give rise to no legal right, and, perhaps, not even to a right which could be enforced in a court of equity as against an ordinary litigant.* Williams’ Law of Bankruptcy (7th Ed.) 191. Indeed, bankruptcy proceeds on equitable principles so broad that it will order a repayment when such principles require it, notwithstanding the court or the trustee may have received the fund without such compulsion or protest as is ordinarily required for recovery in the courts either of common law or chancery. *Hutchinson v. Le Roy*, 113 Fed. 202, 205, 51 C. C. A. 159; *Hutchinson v. Otis*, 115 Fed. 937, 940, 53 C. C. A. 419; *Batchelder & Lincoln Company v. Whittemore* (C. C. A., decided April 23, 1903), 122 Fed. 355. Indeed, so sweeping is this rule that in *Hutchinson v. Otis*, 115 Fed., at page 940, 53 C. C. A. 422, we said that parties having an interest might not be held by a court of bankruptcy even to a mistake merely of



law. Its breadth is also shown in *Lowell on Bankruptcy*, Sec. 310, where it is said that it has been established ever since 1742, beginning with *Scott v. Surman*, Willes 400, and that it is so sweeping that, in actions at law brought by assignees in bankruptcy, defendants may prevail on merely equitable defenses. How it happened that jurisdiction in bankruptcy became of an equitable nature is explained historically in an interesting way in *Robson's Bankruptcy* (2d Ed.), at page 2. \* \* \* These principles fully justify a reasonable claim on the part of the petitioners. No authority cited to the contrary, either under the present statutes of bankruptcy or any previous act, is of sufficient weight or force of reasoning to preponderate against this conclusion. Therefore, even if it could be sustained that the statutes denounce these assignments as contrary to their policy, the especial proposition correctly announced by Mr. Justice Brown would require that the decree under consideration should be reversed. \* \* \* It is also evident that under such circumstances there would be no equity in permitting the creditors to receive such enhanced value without compensation therefor. \* \* \* This is stated in *Clements v. Nicholson*, 6 Wall. 299, 312, 18 L. Ed. 785."

In *Hurley v. Atchison, T. & S. F. R. Co.*, 213 U. S. 126, S. C. Rep., 53 L. Ed. 729, the above case is cited, quoted from, and approved. In *Hurley v. Atchison* the facts as stated by this court were as follows:

"The railway company (the claimant) had agreed that, without waiting until the 15th of the month to make its payment for coal theretofore purchased, it would, in order to accommodate the Mount Carmel Company (the bankrupt) and enable it to

pay off laborers, and keep the mines going, make advance payments from time to time when necessary for those purposes. In pursuance of that agreement, and for the purposes stated, it had advanced \$57,304.16, with the understanding that it should be repaid by the subsequent delivery of coal; that the intervening bankruptcy proceedings of July 7 and the appointment of receivers by the court alone prevented the bankrupt from carrying out its agreement and delivering the coal as required by the contract."

On this state of facts, this court states that to regard the petitioner as an unsecured general creditor would result in destroying the full equitable obligations of the coal company and place the parties on an entirely different basis from that which they had contemplated, and saying that decisions directly in point may not be found, cites the following cases: *Ketchum v. St. Louis*, 101 U. S. 306-319, 25 L. Ed. 999-1003; *Hauselt v. Harrison*, 105 U. S. 401, 26 L. Ed. 1075; *Carr v. Hamilton*, 129 U. S. 252, 32 L. Ed. 669, 9 Sup. Ct. Rep. 295; *Fourth Street Nat. Bank v. Yardley*, 165 U. S. 634, 41 L. Ed. 55, 17 Sup. Ct. Rep. 439.

After quoting at length from *In re Chase*, the court adopts the following portion of the opinion of the Court of Appeals:

"The contract, after the new arrangement, remained as before. The coal company still had a right

to mine coal on the same terms and conditions as before, and was bound to supply the daily needs of the railway company as before. The money paid in advance entitled the railway company to an amount of coal which the money so advanced would pay for according to the terms of the original contract. We think the inevitable meaning of the new arrangement, interpreted in the light of the conditions surrounding the parties, and as necessarily intended by them, was to set apart a sufficient amount of coal after it should be mined as security for the payment of advances made. This result is not expressed in the conventional form of a mortgage or pledge, but the method of producing it was devised for the purpose of acquiring the needed money by the coal company, and of furnishing security for its repayment. If the parties intended the arrangement to be one for borrowing and securing the repayment of money, we ought, as between them, to so regard it, and to treat it as creating an equitable charge or lien, however inartificially it may have been expressed.'

Adding,

"We fully approve of this interpretation of the transaction. Equity looks at the substance, and not at the form. That the coal for which this money was advanced was not yet mined, but remained in the ground to be mined and delivered from day to day, as required, does not change the transaction into one of an ordinary independent loan on the credit of the coal company or upon express mortgage security. It implies a purpose that the coal, as mined, should be delivered, and is, from an equitable standpoint, to be considered as a pledge of the unmined coal to the extent of the advancement. The equitable rights of the parties were not changed by the commencement of bankruptcy proceedings. All obligations of a legal

and equitable nature remained undisturbed thereby. If there had been no bankruptcy proceedings, the coal as mined was, according to the understanding of the parties, to be delivered as already paid for by the advancement.

“We think the conclusions of the Circuit Court of Appeals are right, and its judgment is affirmed.”

Under the rule laid down in the cases above cited, it is not even essential that the court should find that our lien on the pledged demands was enforceable by suit, even in equity. We conceive the underlying principle of these cases to be that it would be a reproach to the law were it to direct its officers, appointed for the sole purpose of administering a bankrupt estate in accordance with the rights, equities and priorities of the respective creditors, to disregard any obligations, rights or priorities which the bankrupt ought, in equity and good conscience, to regard.

Respectfully submitted,

GEORGE E. DE STEIGUER,

FREDERICK BAUSMAN,

DANIEL KELLEHER,

Solicitors for Appellants.





# In the Supreme Court of the United States

OCTOBER TERM, 1909

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THE NATIONAL BANK OF COMMERCE OF  
SEATTLE,

*Appellant,*

*vs.*

R. E. DOWNIE, Trustee; ST. PAUL & TACOMA  
LUMBER COMPANY, BARBER ASPHALT PAVING  
COMPANY, MUKILTEO LUMBER COMPANY, GAM-  
WELL & WHEELER, Bankrupts, and the SEATTLE  
NATIONAL BANK,

*Respondents.*

No. 203

---

THE SEATTLE NATIONAL BANK OF SE-  
ATTLE,

*Appellant,*

*vs.*

R. E. DOWNIE, Trustee; ST. PAUL & TACOMA  
LUMBER COMPANY, BARBER ASPHALT PAVING  
COMPANY, MUKILTEO LUMBER COMPANY, GAM-  
WELL & WHEELER, Bankrupts, and NATIONAL  
BANK OF COMMERCE OF SEATTLE,

*Respondents.*

No. 204

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APPEALS FROM THE UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE NINTH CIRCUIT

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## Brief of Appellants

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GEORGE E. DE STEIGUER,

*Solicitor for The National Bank of Commerce, of Seattle.*

FREDERICK BAUSMAN and

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*Solicitors for The Seattle National Bank.*

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APPEALS FROM THE UNITED STATES CIRCUIT COURT OF  
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## Brief of Appellants

### STATEMENT OF THE CASES.

These are appeals from decrees of the Circuit Court of Appeals for the Ninth Circuit, affirming orders of the District Court, disallowing appellants' claims to preference as to certain assets in the distribution of the estate of Gamwell & Wheeler, Bankrupts.

On April 16, 1907, Arthur Gamwell and Philip Wheeler, partners as Gamwell & Wheeler, were adjudged bankrupts. (Printed Record, page 5). On the same day R. E. Downie was appointed receiver of their property. (p. 6). Thereafter he was elected and qualified as permanent trustee and by an order made June 20, 1907, was authorized to collect all sums of money owing to the bankrupts by the United States Government or any department thereof. (p. 6).

On the 4th day of June, 1907, The National Bank of Commerce of Seattle filed its claim for \$37,149.85, setting forth certain securities held by it therefor in the shape of certain claims against the United States Government for goods furnished, assigned by Gamwell & Wheeler to the bank. (p. 8 et seq.).

On the 18th day of June, 1907, the Seattle National Bank filed its claim for \$22,582.19, setting forth and annexing certain promissory notes of the bankrupts together with securities in the shape of assignments of certain bills and demands against the United States for merchandise sold and delivered to the United States government by the bankrupts. (p. 8, *et seq.*)

Appellees herein filed objections to the claims of preference of the banks. (No. 203, p. 30, *et seq.*;

No. 204, p. 18, *et seq.*) Thereafter, on the 10th day of July, 1907, the parties hereto entered into a stipulation as to said assigned claims, which, omitting title and preliminary recitals, was as follows:

“It is hereby stipulated and agreed by and between the Seattle National Bank, by Bausman & Kelleher, its attorneys; The National Bank of Commerce, by Geo. E. de Steiguer, its attorney; R. E. Downie, trustee of the above-entitled bankrupts, by Messrs. Kerr & McCord, his attorneys; the Barber Asphalt Paving Company and the Mukilteo Lumber Company by their attorneys, Peters & Powell and Cooley & Horan, that the facts in relation to the claims against the government of the United States, assigned by said bankrupts to the above mentioned banks as collateral security for the indebtedness due from said bankrupts to said banks, and to the allowance of which claims as security for such indebtedness the above-named trustee and the Barber Asphalt Paving Company and the Mukilteo Lumber Company have objected, are as follows:

“That each and all of said claims against the United States Government, so assigned, were claims for *money due from the Government of the United States to the said bankrupts* upon account of contracts entered into between said bankrupts and the United States, for the furnishing of materials by said bankrupts to various departments of said government; that said assignments were each and all voluntarily made in consideration of a loan made by said bank to said bankrupts at the time of said assignments and as collateral security for the repayment of said loans and without notice to the other creditors of said bankrupts. That all of such assignments were made after the entering into of said contracts and

after partial performance thereof by said bankrupts before the allowance of any of such claims or the ascertainment of the amount due thereon, or the issuing of any warrant for the payment thereof, and that none of said assignments were executed in the presence of any witnesses at all, and that none of them recite any warrant for the payment of the claim assigned, and that none of them were acknowledged by any officer having authority to take acknowledgments of deeds, or any other acknowledging officer at all, and that none of them were certified as being acknowledged by any officer. The said loans from each of said banks exceeded in amount the value of said collaterals so assigned to secure the same, and there is now due to each of said banks on accounts of the said loans an amount much in excess of the value of the said collaterals so assigned to each of said banks respectively. The claims of said banks and the objections thereto on file are made a part hereof." (No. 203, p. 34; No. 204, p. 21.)

The referee in bankruptcy, on the 22nd day of July, 1907, allowed the claims of the banks as secured debts. (No. 203, p. 35; No. 204, p. 23.) Thereafter the appellees herein, except the trustee, petitioned for a review of the order of the referee. (No. 203, p. 37; No. 204, p. 25.) Upon this review the judge of the district court allowed the claims of the banks as general debts, but disallowed their claims of preference. (No. 203, pp. 40-42; No. 204, p. 27.)

The National Bank of Commerce of Seattle and The Seattle National Bank carried the cases to the Circuit Court of Appeals (No. 203, pp. 42-50; No.

204, p. 30, *et seq.*), both by appeal and by petition for review. Thereafter the Circuit Court of Appeals affirmed the decrees of the district court. (Record, No. 203, pp. 52-61; No. 204, p. 39, *et seq.*)

Thereupon these appellants severally appealed the cases to this court and secured a certificate from one of the justices thereof, that the questions involved in the appeals are essential to a uniform construction of the bankruptcy act throughout the United States. (Record, No. 203, pp 61-68; No. 204, pp. 51, 52.)

Both cases involve precisely the same questions, and by agreement of counsel both appellants join in this brief.

### SPECIFICATION OF ERROR.

The district court and thereafter the Circuit Court of Appeals erred in holding that the assignments to the banks were not valid securities, and in rejecting the appellants' claims of preference as to the assigned claims and their proceeds, and in holding that appellants were only entitled to the rights of general creditors, and in holding that the proceeds of the assigned claims should be distributed among the general creditors of the bankrupts; for the reason that said assignments were made for a valuable and

present consideration, were good under the bankruptcy laws of the United States, were valid as between the parties thereto and as against the creditors of the assignors and the trustee in bankruptcy, and were not invalid under any provision of the bankruptcy law or Sections 3477 or 3737 of the Revised Statutes of the United States.

### ARGUMENT.

The sole question in this case is whether or not the trustee in bankruptcy is entitled to claim and hold the proceeds of the demands pledged to the appellants and to disregard the lien which appellants claim thereon.

This question depends upon the interpretation of the Bankruptcy Act of 1898, and especially of Sections 67d and 70a, which provide as follows:

67d: "Liens given or accepted in good faith and not in contemplation of or in fraud upon this act and for a present consideration, which have been recorded according to law, if record thereof was necessary in order to impart notice, shall not be affected by this act."

70a: "The trustee of the estate of a bankrupt, upon his appointment and qualification \* \* \* shall \* \* \* be vested by operation of law with the title of the bankrupt as of the date he was adjudged a bankrupt. \* \* \* to all \* \* \* prop-

erty which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him."

Section 67d has been held to apply to purely equitable liens, as well as to liens created by statute and common law liens.

*Chattanooga National Bank vs. Rome Iron Co.*, 102 Fed. 755;

*McDonald v. Daskam*, 116 Fed. 276;

*In re Elm Brewing Co.*, 132 Fed. 299.

An engagement to devote a certain fund to the satisfaction of a claim constitutes an equitable lien.

*Walker v. Brown*, 165 U. S. 654;

3 Pomeroy Eq. Jur., Section 1235.

The trustee in bankruptcy has contended and the court below has held that under Sec. 3477 Revised Statutes, appellants could assert no lien, legal or equitable, upon the bankrupt's claims against the United States, and that these claims passed absolutely to the trustee in bankruptcy for the benefit of general creditors.

Section 3477 is as follows:

"All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or con-

ditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney must recite the warrant for payment, and must be acknowledged by the person making them before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer at the time of the acknowledgement, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same."

It is the contention of appellants that the purpose of the section in question is limited to the protection of the government, that the statute concerns disputed "claims" only, and that if applicable at all to assignments of undisputed commercial debts due from the United States, given in the ordinary course of business, as collateral security for mercantile loans, it is not intended to affect, and does not affect, rights to the proceeds of such claims as between the assignee and the assignor or his representatives. It is the contention of appellees that under this section, assignments are nullities under all circumstances and for all purposes.



Appellees contend that this case is controlled by certain decisions of this court. The appellants, on the other hand, contend that it must be governed by certain other cases decided by this court.

The position of the appellees is, of course, supported by the decision in this case of the Circuit Court of Appeals for the Ninth Circuit and of the District Court for the Eastern District of Washington. On the other hand, as we will more fully show hereafter, our position is supported by the practice, and the construction of the statute in question, of the Executive Department of the Government, by the Supreme Judicial Court of Massachusetts, the Court of Appeals of New York, the Supreme Court of Mississippi, the Supreme Court of Appeals of Virginia, the Court of Claims, and the District Court for the District of Oregon.

The questions raised are of considerable importance to the federal government and to government contractors and the banking interests of the country.

Is a contractor to whom the Federal Government may be indebted a million dollars on undisputed bills for materials furnished unable to borrow a thousand dollars on the pledge of his expectations?

Is a contractor to whom the government may already be indebted in vast sums, and who is engaged

in works requiring millions of further outlay, unable to say to a banker: "I give you a pledge which is not good against the government, if the government choose to ignore it, but which will carry a title superior to that of others, and will protect you in the event of my bankruptcy"?

Is competition for government contracts intended to be limited to those few contracting firms who can complete their work out of their own capital, and who do not need to have recourse to the credit and banking privileges upon which ninety-five per cent of the business of the country is conducted?

Is Section 3477 to be so construed as to work not only its obvious and salutary purpose, the protection of the government against improper influences secured through the assignment of shares in disputed claims prosecuted against the government, but another effect wholly unnecessary and absolutely detrimental?

These are questions directly presented in this case.

The language of the statute, taken alone, is broad enough to extend far beyond its purpose, and render ineffective such necessary and important acts as general assignments for the benefit of creditors, and testamentary bequests.

But this court has repeatedly and wisely held that notwithstanding the broad and comprehensive language of the act, it should be given application only to such cases as fall within its purpose.

*Bailey v. The United States*, 109 U. S. 432;

*Goodman v. Niblack*, 102 U. S. 556.

We therefore come to the question, "Does public policy, or the purpose of this statute, forbid the giving of liens on payments due from the government, as between government contractors and their bankers?"

As to ordinary undisputed commercial demands against the government, we think it clear that it does not. The purpose of Section 3477 is limited to *disputed claims*, as to which the government has an interest in discouraging speculation, maintenance, champerty, and assignment to strangers. While it is plain that as to disputed claims the government has a purpose in invalidating all attempts at assignments, it is equally evident that it can have no purpose to invalidate, as between the parties, assignments or pledges of undisputed demands and liabilities, made in the ordinary course of business.

We do not contend that the pledge to this bank must be accepted by the government. The govern-

ment may utterly disregard us, and deal only with its contractors.

What we fairly contend for in our own interest, and in that of all persons having business relations with the government, is that when the controversy about a pledge or assignment lies between *second* and *third* or *third and fourth* parties, different classes of *creditors*, and the demands in question are *undisputed* by the government, the statute has no application, never was intended to have any application, and could not be applied without results wholly unnecessary to the government and wholly at variance with its policy of promoting the solvency, and facilitating the finances, of its contractors.

Today, in the present instance, nobody is endeavoring to enforce this pledge or assignment at all, so far as the government is concerned. Two classes of creditors are merely debating over their respective interests and priorities in such funds as are or shall come into the hands of the trustee, after they have been paid by the government.

While in several opinions this court has considered the general interpretation to be given this section, it seems that the determination of the questions now raised have not been necessary to the decision of any previous case.

Before taking up the cases in which this section has been considered by this court and by the courts of last resort of several of the states, we shall briefly review the history of this enactment.

### SECTION 3477 REVISED STATUTES.

Matter contained in this section is first found in the Act of 1846, Chapter 66 (9 Stat. at Large, 41), as follows:

Chap. 66.—AN ACT IN RELATION TO THE PAYMENT OF  
CLAIMS.

*“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever a claim on the United States aforesaid shall hereafter have been allowed by a resolution or act of Congress, and thereby directed to be paid, the money shall not, nor shall any part thereof, be paid to any person or persons other than the claimant or claimants, his or their executor or executors, administrator or administrators, unless such person or persons shall produce to the proper disbursing officer a warrant of attorney executed by such claimant or claimants, executor or executors, administrator or administrators, after the enactment of the resolution or act allowing the claim; and every such warrant of attorney shall refer to such resolution or act, and expressly recite the amount allowed thereby, and shall be attested by two competent witnesses and be acknowledged by the person or persons executing it, before an officer having authority to take the acknowledgment of deeds, who shall certify such*

acknowledgment; and it shall appear by such certificate that such officer, at the time of the making of such acknowledgment, read and fully explained such warrant of attorney to the person or persons acknowledging the same.

“Approved, July 29, 1846.”

It will be noted that this act, though its title would include all “claims,” relates only to disputed, unliquidated or unauthorized claims, requiring allowance by act of Congress, and that its terms are not broad enough to include *all* disputed and unauthorized claims, since some such claims may be prosecuted before the departments, or before the Court of Claims.

In 1852, while a congressional investigation of various frauds against the treasury was under consideration (Senate Reports No. 1, 33d Congress, Special Session, 1853, Vol. 1, pp. 1 to 216), a bill was introduced under the title: “An Amendment of the Act of 1846, Chap. 66,” and this was later amended and passed in the following form in 1853, its title having been changed to

Chap. 81.—AN ACT TO PREVENT FRAUDS UPON THE  
TREASURY OF THE UNITED STATES.

Thirty-second Congress, Sess. II., Ch. 81, 1853,  
10 Stat. at Large 170:

*“Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That all transfers and assignments hereafter made of any claim upon the United States, or any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or any part or share thereof, shall be absolutely null and void, unless the same shall be freely made and executed in the presence of at least two attesting witnesses, after the allowance of such claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof.*

*“Sec. 2. And be it further enacted, That any officer of the United States, or person holding any place of trust or profit, or discharging any official function under, or in connection with, any executive department of the Government of the United States, or under the Senate or House of Representatives of the United States, who, after the passage of this act, shall act as an agent or attorney for prosecuting any claim against the United States, or shall in any manner, or by any means, otherwise than in the discharge of his proper official duties, aid or assist in the prosecution or support of any such claim or claims, or shall receive any gratuity, or any share of or interest in any claim from any claimant against the United States, with intent to aid or assist, or in consideration*

of having aided or assisted, in the prosecution of such claim, shall be liable to indictment, as for a misdemeanor, in any court of the United States having jurisdiction thereof, and, on conviction, shall pay a fine not exceeding five thousand dollars, or suffer imprisonment in the penitentiary not exceeding one year, or both, as the court in its discretion shall adjudge.

“Sec. 3. *And be it further enacted*, That any Senator or Representative in Congress who, after the passage of this act, shall, for compensation paid or to be paid, certain or contingent, act as agent or attorney for prosecuting any claim or claims against the United States, or shall in any manner or by any means for such compensation aid or assist in the prosecution or support of any such claim or claims, or shall receive any gratuity, or any share of or interest in any claim from any claimant against the United States, with intent to aid or assist, or in consideration of having aided or assisted in the prosecution of such claim, shall be liable to indictment as for a misdemeanor in any court of the United States having jurisdiction thereof, and, on conviction, shall pay a fine not exceeding five thousand dollars, or suffer imprisonment in the penitentiary not exceeding one year, or both, as the court in its discretion shall adjudge.

“Sec. 4. *And be it further enacted*, That any person who shall wilfully and knowingly destroy, or attempt to destroy, or with intent to steal or destroy, shall take and carry away any record, paper, or proceeding of a court of justice, filed or deposited with any clerk or officer of such court, or any paper or document or record filed or deposited in any public office, or with any judicial or public officer, shall, without reference to the value of the record, paper, document, or proceeding, so taken, be deemed guilty of felony, and on conviction in any court of the



United States having jurisdiction thereof, shall pay a fine not exceeding two thousand dollars, or suffer imprisonment in a penitentiary not exceeding three years, or both, as the court in its discretion shall adjudge.

*“Sec. 5. And be it further enacted, That any officer having the custody of any record, document, paper, or proceeding specified in the last preceding section of this act, who shall fraudulently take away, or withdraw, or destroy any such record, document, paper, or proceeding filed in his office or deposited with him, or in his custody, shall be deemed guilty of felony, and on conviction in any court of the United States having jurisdiction thereof, shall pay a fine not exceeding two thousand dollars, or suffer imprisonment in a penitentiary not exceeding three years, or both, as the court in its discretion shall adjudge, and shall forfeit his office and be forever afterwards disqualified from holding any office under the Government of the United States.”*

Section 6 relates to penalty for bribing or unduly influencing members of Congress.

*“Sec. 7. And be it further enacted, That the provisions of this act, and of the act of July twenty-ninth, eighteen hundred and forty-six, entitled ‘An act in relation to the payment of claims,’ shall apply and extend to all claims against the United States, whether allowed by special acts of Congress, or arising under general laws or treaties, or in any other manner whatever.*

*“Sec. 8. And be it further enacted, That nothing in the second and third sections of this act contained shall be construed to apply to the prosecution or defense of any action or suit in any judicial court of the United States.*

*“Approved, February 26, 1853.”*

Section 1 above constitutes the first part of Section 3477, while the last part of that section is taken from Chapter 66 of the Acts of 1846.

The debates in Congress on this measure (pp. 64, 67 and 216 Appendix Cong. Globe, Vol. 2, Second Session, 32d Congress, 1852-3), as well as the title of the act, indicate that the sole intent of Congress was the prevention in future of frauds such as those then under investigation, that is to say, frauds through the assignment of interests in disputed, doubtful and groundless claims to lobbyists, attorneys, members of Congress, and government officials, in order to improperly influence the allowance of such claims by Congress or by the departments.

Howsoever broad its language, this was the purpose of the act and the scope of its application in the mind of the Congress that enacted it.

#### WHAT WAS ITS CONTEMPORARY INTERPRETATION BY THE EXECUTIVE DEPARTMENT?

That same year, 1853, the first comptroller issued a circular for the guidance of the officials of the government, in which he announced that the act of 1853 does not include *undisputed* claims. We have

not had an opportunity to examine this circular, but its existence and provisions are referred to in the opinion of Attorney-General Brewster hereinafter quoted.

The interpretation adopted in this circular appears to have been steadily adhered to by the executive department of the government from 1853 to the present time. *Freedmen's Savings & Trust Co. v. Shepherd*, 127 U. S. 494, and numerous other cases which have come before this court show the acceptance of assignments of undisputed claims.

In 1883, several cases involving the application of this section having arisen, the matter was submitted to Attorney-General Brewster, for whom a very painstaking and thorough investigation appears to have been made by the then solicitor-general, S. F. Phillips, the results reached being embodied in the following opinion of the Attorney-General, which we print in full as a statement and explanation of the interpretation, application, and enforcement given to this act by the executive department through the fifty-seven years which have elapsed since its enactment:

(The italics are those of the solicitor-general.)

Vol. 17 Opinions of Attorneys General, page 545:

## CLAIMS AGAINST THE UNITED STATES.

*“The provisions of Section 3477, Revised Statutes, touching transfers and assignments of claims against the United States, and powers of attorney, etc., for receiving payment thereof, do not apply to undisputed claims, or any claim about which no question is made as to its validity or extent.*

*“Where a contract was made for roofing a courthouse at a fixed price, and a power of attorney given to receive a part of such price as security for material purchased by the contractor: Advised that the power was not affected by Section 3477, as no doubt existed concerning the right of the contractor to receive the amount so secured.”*

DEPARTMENT OF JUSTICE.

May 28, 1883.

“SIR: Yours of the 3d of February last asks whether the word ‘claim’ in Section 3477 of the Revised Statutes includes claims against the United States that are *liquidated* as well as those that are *unliquidated* and in this connection three cases are stated as illustrating the question pending before you.

“The provision in Section 3477 to which you refer is as follows: ‘All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a

claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof.'

"The expression 'claim,' as is well known, is one of the most comprehensive in the vocabulary of the law. The only question here, therefore, is how far the purview or the history of the above statute indicates that this word is employed therein in some, and if so what, more narrow sense.

"The above passage comes originally from the act of 1853, chapter 81, and it remains in the words in which it was first introduced by Mr. Badger, in April, 1852, at the Congress preceding that in which it became a law. (Globe, Vol. XXIV, part 2, pp. 984, 1128.) Its author was well known as an eminent lawyer, and an especially skillful draughtsman. Originally the bill which contained it was entitled 'An amendment of the act of 1846, chapter 66.' When taken up at the next Congress its scope was somewhat enlarged, and the title changed. However, its connection with the act of 1846 remained apparent in the body thereof.

"The act of 1846 regulated assignments, etc., of such claims as are *allowed by Congress*. Upon its passage through the House of Representatives it seems to have been under the charge of Mr. Thurman, but there is no report of debate in either house, so far as I have found. It is a part of extensive legislation upon matters of finance, which distinguishes that year, and its promise of benefit was probably universally admitted.

"When first introduced Mr. Badger's bill made void not only all assignments and powers of attorney affecting claims, but likewise *all contracts whatever for compensation to claim agents*. At its second appearance this latter provision was omitted (Globe, Vol. XXVI, pp. 242, 288.) The legislature there-

merely casual, that section 3477, which is compounded of the acts of 1846 and 1853, should in accordance with a marked trait in Anglo-Saxon legislation show upon its face that it deals with a specific evil to which the attention of Congress had actually at the time been drawn, and is not meant as an abstract and universal statutory provision shaped by square and compass, or as broad, say, as the word 'clameum,' spoken of by Coke as the most comprehensive in the law.

"Comprehensiveness in meaning is not infrequently akin to vagueness and consequently to obscurity; so that it is not unusual for interpreters of legal documents to color or restrain general terms occurring therein by *specific* words associated therewith, or by matters connected with their history. In the present instance, as has been shown, we may bring both of these influences to bear.

"In this connection it is significant that a subsequent clause in section 3477 *expressly excludes the conclusion* that the phrase 'all transfers' therein means less than 'all,' whilst there is no such pains taken with the adjoining phrase, 'any claim.' Apparently, then, the latter is left of purpose to such color as the context, etc., may suggest.

"It is also pertinent to the general question to observe that the second section of the act of 1853 made it indictable for officers of the United States to 'prosecute any claim' as agent or attorney. I take it that 'prosecution' in this place denotes any method by which 'a claim' may be recovered; and therefore that it varies *secundum subjectam materiam* of the class of claims to which it may be actually applied. If the word claim here is to have the meaning assigned by Coke, then for one class *presentation* thereof is *prosecution*, and a public officer would become indictable if in behalf of an absent friend he were to present to

the treasury, even without compensation, any account against the United States, no matter how plainly due. But I apprehend that the expression *prosecute* gives the same color to the word *claim* in this second section that in the first is reflected from the matters above suggested, and so that it aids in showing that Congress was thinking of, and except as actually therein otherwise expressed was guided by, the ancient policy as to *champerty*.

"It is therefore pertinent to observe here that at common law it is not champerty to stipulate for a share in collecting a debt (from *ex gra.*, some distant debtor) by a mere presentation thereof. For that effect it is necessary that there should be, as the books say, a *quarrel* or *taking of sides* about the debt by the parties thereto. If no such dispute exists, either in pais or in court, compensation to a proposed collector is allowable. And even in case of suit in court it is 'certain that the assignee of a bond or other chose in action, being made over to him for good consideration in satisfaction of a precedent debt, and not merely in consideration of the intended maintenance,' is not champerty. *Hawkins* (Book 1, chapter 83, sec. 17), and others. That is even where there is *litigation*, unless there is also a *particular sort of consideration*, assignments of the kind just mentioned are not invalid at common law. We have seen that section 3477, following the statute of 1853, has expressly changed this rule so far as regards *consideration*. And, as already submitted, that exception concurring with other indications to the same effect *proves the rule* in other respects, and consequently that section still contemplates the existence of *litigation* (i. e., some virtual *quarrel* or *sides-taking* betwixt the supposed original creditor and the United States) in order to constitute such a claim as is within its provisions.



“Considerations arising from the history of a statute are of course most apt to occur to those who may be called to administer its provisions *contemporaneously*. In the present case, therefore, it is interesting to observe that contemporaneously the First Comptroller issued a circular in which he announced, as a rule of action in settling demands against the government, that the act of 1853 did not include *undisputed* claims.

“I have carefully read the cases in the Supreme Court of the United States reported in 95 U. S. 407, 97 ib. 392, 484, and 102 ib. 556, and understand that the views above expressed do not conflict with anything there decided.

“I have also attentively considered the opinion in Spaid’s case (16 Opin. 161) to which you refer. There a questionable power of attorney *had been revoked*, and, as no *interest* was connected with the power, there was little difficulty in holding that the latter was at an end—and so Attorney General Devens said; but he added, by the way, that the power itself (to collect installments from time to time upon a contract to dredge a river) was in violation of Section 3477, and so had never been valid. It is important to say that *no question upon that point had been asked of him*, and from the passage quoted by you (16 Opin., page 263) in regard to ‘concurrence,’ as well as upon the whole face of the opinion, it is doubtful whether that learned and able lawyer had thoroughly considered either the foundation or the effect of this *dictum*.

“I hope to be understood upon the whole as advising that Section 3477 does not apply to any claim against the United States about which no question is made as to its authority or extent. By ‘question,’ I mean, of course, question by some officer lawfully authorized in that behalf.



“It seems, therefore, that the policy of the above section forbids that an *assignee or attorney as to the proceeds of an executory contract* (*ex gra.*, for building, dredging, etc.) shall have more than an uncertain interest therein, i. e., one contingent upon the absence of any subsequent question by the United States as regards any matter which at the time of the question is in the future—such as the amount or quality of the article to be paid for.

“It is hardly necessary to add that nothing in this discussion, or in Section 3477, touches those claims against the United States that arise upon instruments, such as bonds, etc., the transfer, commercial character, etc., of which have been provided for by special legislation.

“To apply the above conclusion to the particular cases which you mention as pending before you:

“(1) In Jones’ case a contract has been made for roofing a court house at a fixed price, and a power of attorney to receive a part of such price has been given as security for material purchased by the contractor.

“Inasmuch as no doubt has arisen as to the title of the contractor to receive the amount so secured, I am of the opinion that the power is not affected by Section 3477.

“(2) In Snyder’s case the circumstances are substantially the same, except that the power covers the whole price, and therefore the same result follows.

“(3) Marshbank’s case differs from those above, in that the contract is still executory. As I have said, it seems that nothing can be done at present upon the part of the United States which shall conflict with the operation of Section 3477 at any time hereafter that a demand is made for payment upon this contract, either in whole or by installment.

"If at any such time the contract is, in either of the ways suggested above, *disputed* by public officers authorized so to do, an application for payment thereunder will become a claim within Section 3477, and the power consequently void. No 'acceptance' can obviate this liability.

"Very respectfully, your obedient servant,  
S. F. PHILLIPS, Solicitor-General."

"THE SECRETARY OF THE TREASURY:

"Having examined this case and considered the above opinion, I concur with the solicitor-general in his answers to the questions propounded and in his interpretation of Section 3477 and in all of the conclusions he has arrived at and presents, and I answer as he has answered.

BENJAMIN HARRIS BREWSTER.

June 7, 1883."

Eleven years later, in the fall of 1894, this same question was submitted to Attorney-General Richard Olney. The essential portion of his opinion is as follows:

"And if it be true that Whalley & Taylor have actually assigned this debt" (an indebtedness for the balance due, amounting to \$17,000.00, for work performed as government contractors) "to Leonard and others, then upon that state of facts I concur in the views expressed in the opinion of a former solicitor-general, which are approved and adopted by the Hon. Benjamin Harris Brewster, my predecessor in office, *that such an assignment is not in violation of Section 3477, Revised Statutes.*

"Very respectfully,

"RICHARD OLNEY.

"TO THE SECRETARY OF WAR."

21 Opinions of Attorneys-General, p. 75.

See also 12 Opinions of Attorneys-General, p. 216, to the same effect.

The above opinions are not cited to this court because they are the opinions of Benjamin Harris Brewster and Richard Olney, though able lawyers both, but because they show the construction uniformly given this section by the executive department of the government, for whose protection it was enacted, an interpretation ever since relied on by bankers who have been called upon to assist government contractors and government work. These opinions clearly and squarely state and convincingly support the very same interpretation of the statute which appellants here contend for. If the construction thus adopted is wrong, unreasonable, perilous to the public treasury, or subversive of the purposes of this act, then we concede that it ought to be rejected and a sound construction adopted, regardless of the injustice and loss incidentally inflicted upon individuals who have relied upon the construction heretofore current.

But if the construction adopted, and which we contend for, is reasonable and consistent with the carrying out of the purpose of this act, then we say that it ought not to be reversed, but ought to be adopted

and sustained by this court, even though the language of the act may be equally susceptible of some other and different construction. In this connection we rely upon the many expressions of this court to the effect that great weight will be given to the contemporaneous construction of acts of Congress by the department of the government charged with their enforcement, especially if such construction has been long continued and has been of a nature to guide business practice and to be adopted as a rule of property; and that such interpretation will not afterward be disturbed by this court unless it is grossly and palpably wrong and contrary to justice or to the public interest.

The interpretation of this statute as one aimed at evils of the nature of champerty and maintenance is supported by many expressions of this court, and is, we believe, the only construction of the statute with which *all previous decisions of this court can be reconciled*.

In 1853, the year this act was passed, this court first had occasion to discuss it, and its *contemporaneous interpretation* of the act seems to have been the same as the contemporary interpretation given it by the executive arm of the government, for

Mr. Justice Grier says, speaking for the court, and evidently having reference to section one of the act:

“This act annuls all *champertous contracts* with agents of private claims.”

*Marshall v. Railroad Co.*, 16 How. 336.

Again, in *Spofford v. Kirk*, the case principally relied on by appellees, this court refers to the *danger* apprehended by Congress from the assignment of interests to gain influence “in the prosecution of claims which might have no real foundation, of which the facts of the present case afford an illustration.”

In *Freedmen’s Savings & Trust Co. v. Shepherd*, 127 U. S. 494, 32 L. Ed. 163, the court considers a case involving an assignment of a different sort of demand, not a disputed or litigated or groundless “claim,” but a recognized current business obligation of the government. The court here takes a very different attitude toward the assignment from that which it has taken in dealing with champertous assignments of disputed claims, and substantially makes the distinction which we now contend for. On this state of facts, the court, speaking by Mr. Justice Harlan, says:

“Undoubtedly, the lease made by Bradley to the United States created in his favor what, in some sense, was a ‘claim upon the United States’ for each

year's rent as it fell due. And, *if the statute embraces a claim of such a character*, there could not have been any valid transfer or assignment of it in advance of its allowance, which could have been made the basis of a suit by the assignee against the United States, or which would compel the government to recognize the transfer or assignment. It is, perhaps, also true that, under some circumstances, the assignor, before the allowance of the claim and the issuing of the warrant, may disregard such an assignment altogether.

“But when the government ascertained the amount of rent due under Bradley's lease, and, with his consent, allowed the same to him for the use of Shepherd, for the use of Taylor, Bacon and Cross, trustees, we perceive nothing in the words or the policy of the statute preventing Thompson from asserting his rights either against the parties, or any of them, named in the warrants issued by the government, or against the trust company, the mortgagee of the premises. The object of the statute, as was said in *Bailey v. U. S.*, 109 U. S. 432, was to protect the government and not the claimant, and to prevent frauds upon the treasury; and an ‘effectual means to that end was *to authorize the officers of the government to disregard any assignment or transfer of the claim*, or any power of attorney to collect it, unless made or executed after the allowance of the claim, the ascertainment of the amount due thereon, and the issuing of the warrant for the payment thereof.’ Here, the officers of the government chose to recognize the assignment, and of their action neither Bradley nor Shepherd, nor Shepherd's trustees, can rightfully complain. The government is acquitted of any liability in respect to the claim for rent, for its officers have acted in conformity with the directions, not only of the original claimant, but of his assignee, Shepherd, and of Shepherd's trustees.

*The simple question is whether the money received from the government shall be diverted from the purpose to which Bradley, Shepherd and Shepherd's trustees agreed in writing that it should be devoted, namely, to the payment of the debts Thompson holds against Shepherd. This question must be answered in the negative; and in so adjudging we do not contravene the letter or the spirit of the statute relating to the assignment of claims upon the United States."*

This language and decision are consistent with only one construction of this statute, the construction adopted by the departments and contended for now by appellants. The decision seems to us conclusive of the case at bar.

In *Ball v. Halsell*, 161 U. S. 72, 16 Supreme Court Reporter 554, this court says:

"The legislation shows that the intent of Congress was that the assignment of naked claims against the government for the purpose of suit, or in view of litigation, or otherwise, should not be countenanced at common law. At common law, the transfer of a mere right to recover in an action at law was forbidden, as violating the rule against maintenance and champerty; and, although the rigor of that rule has been relaxed, an assignment of a chose in action will not be sanctioned when it is opposed to any rule of law of public policy; citing *Hager v. Swayne*, 149 U. S. 242, 247, 248, 13 Sup. Ct. 841."

In *Goodman v. Niblack*, 102 U. S. 556, 560, where the question was whether the above statute embraced a voluntary assignment for the benefit of creditors,

by which the plaintiff therein (the only creditor claiming under the assignment) was given a preference, this court, referring to *Erwin v. U. S.*, said:

“The language of the statute, ‘all transfers and assignments of any claim upon the United States, or of any part thereof, or any interest therein,’ is broad enough (*if such were the purpose of congress*) to include transfers by operation of law, or by will. Yet we held it did not include a transfer by operation of law, or in bankruptcy, and we said it did not include one by will. *The obvious reasons of this is that there can be no purpose in such cases to harass the government by multiplying the number of persons with whom it has to deal, nor any danger of enlisting improper influences in advocacy of the claim, and that the exigencies of the party who held it justified and required the transfer that was made.* In what respect does the voluntary assignment for the benefit of his creditors, which is made by an insolvent of all his effects, which must, if it be honest, include a claim against the government, differ from the assignment which is made in bankruptcy? *There can here be no intent to bring improper means to bear in establishing the claim, and it is not perceived how the government can be embarrassed by such an assignment. The claim is not specifically mentioned, and is obviously included only for the just and proper purpose of appropriating the whole of his effects to the payment of all his debts. We cannot believe that such a meritorious act as this comes within the evil which congress sought to suppress by the act of 1853.*”

In *Price v. Forrest*, 173 U. S. 410, 19 Sup. Ct. 438, this court, in the course of reviewing the cases, quotes the above language, and says:



"The doctrine of these cases has not been modified by any subsequent decision. \* \* \* As this court has said, the object of congress, by Section 3477, was to protect the government, and not the claimant, and to prevent frauds upon the treasury. *Bailey v. U. S.*, 109 U. S. 432, 3 Sup. Ct. 272; *Hobbs. v. McLean*, 117 U. S. 576, 6 Sup. Ct. 870; *Trust Co. v. Shepherd*, 127 U. S. 494, 506, 8 Sup. Ct. 1250. *There was no purpose to aid those who had claims for money against the United States in disregarding the just demands of their creditors.* We perceive nothing in the words or object of the statute that prevents any court of competent jurisdiction, as to subject-matter and parties, from making such orders as may be necessary or appropriate to prevent one who has a claim for money against the government from withdrawing the proceeds of such claim from the reach of his creditors; provided such orders do not interfere with the examination and allowance or rejection of such claim by the proper officers of the government, nor in any wise obstruct any action that such officers may legally take under the statutes relating to the allowance or payment of claims against the United States. If a court, in an action against such claimant by one of his creditors should, for the protection of the creditor, forbid the claimant from collecting his demand except through a receiver, who should hold the proceeds subject to be disposed of according to law under the order of court, we are unable to say that such action would be inconsistent with Section 3477."

In *Nutt v. Knut*, 200 U. S. 12, this court once again considers a case involving the assignment of an interest in a disputed claim, assigned in consideration of services to be rendered in pressing it against the government,

and holds such an assignment void on its face. We have, therefore, no dispute with the expressions of this court in *Nutt v. Knut*.

In *Dowell v. Cardwell*, 4 Sawr. 217, Fed. Cas. 4039, this statute is considered and held applicable only to disputed, litigated or unrecognized claims, the court stating its interpretation of the statute as follows:

"But my impression is that the section is not applicable to any of these claims. In my judgment 'a claim upon the United States' is something in the nature of a demand for damages arising out of some alleged act or omission of the government, not yet provided for, or acknowledged by law. As the term imports, it is something asked for or demanded on the one hand and not admitted or allowed on the other. Worcester and Bouvier, verba 'Claim.' When the demand is admitted, authorized or provided for by law it is not a mere claim, but a debt. It no longer rests in mere clamor or petition, but is something due upon which an action may be maintained.

"By the acts of 1854 and 1871, *supra*, it was provided that these claims should be adjusted on 'just and equitable principles' and paid accordingly. Thereafter, if not before, they were debts and not mere claims." \* \* \*

\* \* \* "Even if the case was within the statute as between the parties and the United States, Griswold, having obtained this money in violation of or contrary to it, ought not to be allowed to set it up in this suit to prevent the plaintiff from recovering that portion of it which in equity belongs to him."

We have considered heretofore one aspect of this case only: whether or not the statute applies to undisputed obligations of the government. If it does not, appellants are entitled to priority, since the demands assigned were for current sales of goods theretofore delivered to the government (Record, No. 204, p. 10 et seq.), and were for money "due from the Government of the United States to said bankrupts" (Stipulation of Facts, Record, No. 203, p. 34; No. 204, p. 22). As the record shows, there was never any suggestion of any dispute of the claims on the part of the United States. Of course, even without the stipulation, the assignments are good in the absence of evidence that they fall within the class of "Claims" affected by the statute.

If the statute be held to apply to undisputed obligations, several further questions arise.

Does the statute render such assignments as we are considering *void for all purposes*, or only void or voidable so far as the United States is concerned?

Does the statute apply at all to mere pledges or assignments as security for mercantile loans?

If the statute renders such assignments void and ineffective so far as the transfer of the legal title is concerned, even between the parties, is not a trust or equitable pledge created?

Are not assignments under such circumstances to be construed as agreements to appropriate the proceeds of the claims to the repayment of the loans for which they are pledged?


Are not the equities of the appellants, who have enriched the estate in reliance on this security, entitled to the protection of a court of bankruptcy, regardless of their enforceability by ordinary suit?

Do not the assignments in question fall within the spirit of the exception heretofore established by this court in favor of assignments for the benefit of creditors, whether voluntary or involuntary, and whether for the general benefit of all creditors, or giving a preference to one creditor, as in *Goodman v. Niblack, supra*?

If Gamwell & Wheeler had had no creditors but the bank, and no assets but their demands against the government, would an assignment in the form of a general assignment for the benefit of creditors have been effective to give a lien, but a specific assignment of the very same demands, ineffective? Would

an assignment for the benefit of their creditors generally, with a preference to the bank, have been effective, but separate equitable pledges, enabling these contractors to keep on their feet and fulfill their contracts with the government, ineffective? Is it to be announced that a government contractor, desirous to protect creditors who have advanced him funds in reliance upon his contracts and in order to enable him to fulfil them, can only protect those creditors in their just rights by financial suicide, with its incident destruction of his power to continue the fulfilment of his government contracts?

The glaring fact which stands out in the midst of all discussion of this subject is that the statute *could not have been intended to apply to such a case as that at bar*, and that to avoid such inequity and senseless damage to government and contractor alike, some other interpretation must be sought.



The last Massachusetts case and the New York cases which we shall cite are rested on a construction of the statute which gives it effect only at the election of and in favor of the United States, leaving all assignments valid and binding as between the parties and their successors or assigns. We do not oppose this construction of the statute. Perhaps it is the correct one. It sustains our case and goes further than is necessary to sustain our case. But we ourselves think that the most sound and satisfactory construction is that which we have heretofore discussed, which reconciles the several decisions of this court. This is the contemporary interpretation of the act, adopted into the practice of the departments: it conforms with the intention of the congress; it remedies the evils intended, and it avoids all unnecessary interference with legitimate business needs. The construction appellees contend for would place further and useless difficulties in the way of filling government contracts; would hamper the federal government in dealing with its contractors, and would, through the narrowing competition, enhance the prices which the govern-

ment must pay for supplies, without the slightest compensating public advantage.

We will briefly consider the other possible interpretations of this act in our further discussion of the cases.

#### IS THE ACT APPLICABLE TO MERE COLLATERAL SECURITY FOR LOANS?

As we have seen, the sole purpose of this statute is the prevention of frauds against the United States through the enlistment of improper influences to aid in their prosecution. Do assignments or pledges given to secure mercantile loans fall within its terms as limited by its purpose?

The act does not *eo nomine* forbid the pledge of a claim or its proceeds as security to a creditor. Such a pledge, an assignment only in name, pledge of a claim or its proceeds given as security to a creditor. Such a pledge, an assignment only in name, since it is not intended to be enforced against the United States, could not be used as a means of enlisting improper influences in aid of the claim. It only secures to the pledgee the amount of the pledgor's indebtedness to him. This interpretation of the statute would not operate to allow a claimant to grant or

*donate* any further share or interest in his claim, which might then become an inducement to the exertion of influences in his behalf. To construe the statute as including and denouncing pledges given as security for *bona fide* mercantile loans in aid of the solvency of contractors and the fulfilment of contracts would, if this act be held to have any application at all to current undisputed demands, be a serious blow against economy, speed and efficiency in the execution of government undertakings. It would be disastrous to contractors who require loans in order to enable themselves to carry out their contracts with the government, their alternative, if the government says that such security as they can offer is worthless, being either failure to fulfil their contracts, or useless and senseless delay, harmful alike to the government and to the contractor, while awaiting the liquidation of already matured demands against the United States.

These are serious considerations, for it is not to be lightly presumed that congress intended to uselessly and unnecessarily hamper the government, impair its efficiency, and lessen its opportunity for economy by proscribing and nullifying *between the parties* the only security a government contractor can offer for advances necessary to enable him to



fulfil his contracts. There is a very strong presumption that congress never intended this, and the presumption can only be overcome by language that *admits of no other reasonable interpretation*. Is such language used in the act? Far from it. The language used never mentions *loans* or *securities*, never mentions *debts*, *demands* or *obligations*, but deals solely with "claims," "bribery," "undue influence," "prosecution of claims," and dealings between litigants, claimants, lobbyists, and the government and government officers.

The act forbids, it is true, the assignment of "any interest" in such claims, but it is very plain that the interest referred to is a share or percentage in an expectancy—a part interest in a disputed demand, to be forced or insinuated into the public treasury. It is obvious from the context that the equitable pledge of undisputed demands as security for mercantile loans are not referred to by the words "assignments of any *interest* therein."

This statute has been subject to examination by this court in many cases—

*Spofford v. Kirk*, 97 U. S. 484.

*United States v. Gillis*, 95 U. S. 407;

*Erwin v. United States*, 97 U. S. 392;

*Goodman v. Niblack*, 102 U. S. 556;

*Ball v. Halsell*, 161 U. S. 72;

*Freedman's Savings & Trust Co. v. Shepherd*,  
127 U. S. 494;

*Hobbs v. McLean*, 117 U. S. 567;

*St. Paul & Duluth R. R. v. United States*, 112  
U. S. 733;

*Bailey v. United States*, 109 U. S. 432;

*Price v. Forrest*, 173 U. S. 410;

*Nutt v. Knut*, 200 U. S. 12.

In the first case cited, *Spofford v. Kirk*, there was used what has been subsequently alluded to in opinions of this court as strong language. This language must be construed with reference to the facts then under consideration. The case, as is pointed out in *Goodman v. Niblack*, *supra*, involved the transfer or assignment of a part of a disputed claim then in controversy, on account of demands for damage for property taken by the United States army during the

war, and in the opinion it was stated that the facts of the case offered an illustration of the danger of possible combinations of interests and influences in the prosecution of claims which have no real foundation.

Aside from *Spofford v. Kirk*, a decision which—or the language of which—has been later seriously qualified, the cases above referred to, in so far as it may be contended that they have any application to this case, may be grouped in three classes.

*First*, we find cases where the assignee endeavors to assert his claim against the government. To this class of cases belong *United States v. Gillis*, which concerns a disputed claim for property seized during the war, and *St. Paul & Duluth R. R. Company v. United States*, involving a disputed claim for additional compensation for carrying the mails, denied by the postoffice department. In these cases it appears, both from the title and from the facts stated, that the controversy was between the assignee and the government; and the assignments are held invalid as against the government unless the government assents thereto, it being pointed out in the *Gillis* case that claims against the United States are, *as against the government, unassignable, in the absence of statute*, and that the special law under which that suit

was brought gave a right of action only to the *owner* of the seized goods. The St. Paul & Duluth R. R. case was *decided* upon the ground that the terms of the assignment were not broad enough to carry the claim in question, regardless of the statute.

The *second* group of cases includes those wherein the consideration of the assignment is that the assignee shall intervene between the assignor and the government. These are all cases in which a contract is made for the prosecution of a disputed claim for damages against the United States, and the person undertaking its prosecution is given a lien upon, or assignment of, a portion of the fund to be collected. To this group belong *Ball. v. Halsell* and *Nutt v. Knut*. Admittedly the principal, if not the sole object of the statute in question was to prevent the enlistment of improper influence in favor of such claims against the government, and for this reason the government forbids the intervention of third parties between itself and claimants. In view of this reason for the statute, the assignments involved in these two cases were, as a matter of course, invalid. The language of these two cases will be discussed further hereafter.

The *third* group of cases includes those where the controversy is between the original claimant

or his successors in interest, and the assignee, and where it was not a part of the consideration or contract of assignment that the assignee should intervene in any manner between the claimant and the government. To this class of cases belong *Goodman v. Niblack*, *Hobbs v. McLean*, *Freedman's Savings & Trust Co. v. Shepherd* and *Price v. Forrest*.

In *Goodman v. Niblack* there was under consideration the validity of a deed of assignment made by the original claimant for the benefit of his creditors, but which assignment contained certain preferences. The claims assigned appear to have been undisputed commercial demands. The controversy arose between the administrator of the original claimant and the person who claimed to be entitled to the preference, the latter being plaintiff in the suit. The lower court sustained a demurrer to the complaint. This court reversed the decree of the lower court, and in doing so Mr. Justice Miller used the following language:

"It is understood that the Circuit Court sustained the demurrer *under pressure of the strong language of the opinion in Spofford v. Kirk*. We do not think, however, that the circumstances of the present case bring it within the one then under consideration, or the principles there laid down. *That was a case of the transfer or assignment of a part of a disputed claim, then in controversy, and it was clearly within all the mischiefs designed to be remedied by the statute.* Those mischiefs, as laid down

in that opinion, and in the others referred to, are mainly two:

“First—The danger that the rights of the government might be embarrassed by having to deal with several persons instead of one, and by the introduction of a party who was a stranger to the original transaction.

“Second—That by a transfer of such a claim against the government to one or more persons not originally interested in it, the way might be conveniently opened to such improper influences in prosecuting the claim before the departments, the courts or the congress, as desperate cases, when the reward is contingent on success, so often suggest.

“Both these considerations, as well as a careful examination of the statute, leave no doubt that its sole purpose was to protect the government, and not the parties to the assignment.”

“We do not think the transfer to Cheever & Miles, the trustees for creditors, is forbidden by the act of 1853, or by any other principle of law or public policy.”

This is in favor of the contention there advanced by plaintiff, who forcefully argued that an intention to unnecessarily interfere with such a reasonable right as that of protecting one's creditors ought not to be attributed to congress, *if there is any reasonable escape from such construction.*

It appears in this case that the plaintiff's bill alleged that there were no other debts of Sloo, the assignor, secured by the assignment. Whatever

other debts had existed had been paid, and the sole claim asserted under the assignment was the plaintiff's preferred claim of \$35,000.

In *Hobbs v. McLean*, one Peck had a contract for furnishing the government certain supplies. He had associated certain persons with him upon the agreement that after the contract was completed a settlement of profits and losses should be made on a prescribed basis. Later he gave to the two persons in question promises to pay certain amounts out of the proceeds of the contract. Peck afterwards became bankrupt and the suit involved the conflicting claims of his assignee in bankruptcy and his partners and assignees. The court decided in favor of the latter, and in doing so used the following language:

"We are of opinion that the partnership contract was not opposed to the policy of the statute. The sections under consideration were passed for protection of the government. (*Goodman v. Niblack*, 102 U. S. 556.) They were passed in order that the government might not be harassed by multiplying the number of persons with whom it had to deal, and might always know with whom it was dealing until the contract was completed and a settlement made. *Their purpose was not to dictate to the contractor what he should do with the money received on his contract after the contract had been performed.*"

In *Bailey v. The United States*, 109 U. S. 432, this court, after quoting from *Goodman v. Niblack* and other cases, says:

"These cases show that the statutes in question are not to be interpreted according to the literal interpretation of the words used. They show that there may be assignments or transfers of claims against the government, such, for instance, as those passed on in *Erwin v. U. S.* and *Goodman v. Niblack*, which are not forbidden by these statutes."

The case of *Freedman's Savings & Trust Co. v. Shepherd* involved conflicting claims to a certain amount due from the United States government for rent, an *undisputed current business obligation* of the government as distinguished from a disputed claim. One Thompson received an assignment thereof as collateral security. The court sustained the assignment, and as part of an elaborate discussion of this statute used the language which we have quoted on page 33 of this brief.

In *Price v. Forrest*, from which we have already quoted, the following facts, in brief appear: Price, and later his heirs, were about to receive moneys on what had been a disputed claim against the government. Forrest's administratrix secured the appointment of a receiver to take this draft and apply it upon a judgment held by her against Price, and Price was ordered to endorse the warrant issued for the claim to the receiver. The facts, of course, are very different from those in-



volved in this case, but the following language of the decision is significant:

“There was no purpose to aid those who had claims for money against the United States in disregarding the just demands of their creditors.”

The case of *Bailey v. United States* is important in this: It lays down the doctrine that the government may, if it desires, recognize the assignment. In other words, even as between the government and the assignee of a claim, the assignment is not absolutely void but voidable only at the option of the government.

The chief claim of the appellee seems to be that since the various decisions which we have cited as sustaining the validity of our securities, and since the decisions by the highest courts of New York, Massachusetts and Mississippi upholding this contention, this court has decided the case of *Nutt v. Knut*, and there held that the assignment was invalid. In that case it appears that an attorney was employed to prosecute a claim of one million dollars against the United States. It was agreed that he was to receive thirty-three and one-third per cent. of the amount allowed on the claim, and of any draft, money or evidence of indebtedness which might be issued thereon. He was

also appointed as an attorney in fact to sign all drafts and vouchers which might be requisite in the prosecution or collection of the claim. The Supreme Court of Mississippi, in an action brought by the attorney, sustained his claim against the administrators of the original claimant, but did not give him any lien upon the claim, and, in fact, no lien seems to have been claimed in the state court. This court affirmed the judgment of the Supreme Court of Mississippi, but in the opinion says the state court erred in holding the contract on its face to be consistent with the statute (Section 3477), though this conclusion was not necessary to the decision of the case. Nothing in this decision is inconsistent with what has been decided in the cases we have quoted from. Nothing in *Nutt v. Knut* conflicts in the slightest degree with the appellant's construction of the statute. The contract giving the attorney a lien upon the disputed claim he was there prosecuting against the United States was, as the court points out, in plain and flagrant violation of both the terms and the purpose of the statute, a statute aimed against the evils, in the nature of maintenance, champerty and bribery, incident to assignments of interests in disputed or litigated claims against the government.

Comparing the case at bar with *Milliken v. Barrow*, 65 Fed. 888, 893, and with *Dulaney v. Scudder*

(C. C. A. 5th Circuit), 94 Fed. 6, it is evident that the purpose of the statute is no more applicable in this case than in those. In each, the claimant's money has been contributed toward the *creation* of the claim on which a lien is sought to be attached. It has been paid in to keep the business in operation, and in reliance on the debt thereby created against the government, as a fund securing its payment. The Milliken case well points out the injustice and impolicy of cutting off such securities, though it apparently fails to notice the distinction between disputed claims and admitted debts of the government, and that between the assignment of claims to strangers, and the attaching of an equitable lien in favor of a creditor who preserves the business life of a contractor by loans on the faith of such security.

We submit that there is no justice in any line of artificial distinction between such cases as those last cited and the case at bar.

The question now raised has been considered and decided by the courts of last resort of four of the states: Massachusetts, Mississippi, New York and Virginia, and these courts have concurred in holding the statute inapplicable to such a case as that now before the court.

*Yorke v. Conde*, 147 N. Y. 486, 42 N. E. 193;  
*In re Hone*, 153 N. Y. 528, 47 N. E. 798;  
*Jernegan v. Osborne*, 155 Mass. 207, 29 N. E. 520;  
*Thayer v. Pressey*, 175 Mass. 233, 56 N. E. 5;  
*Fewell v. Surety Co.* (Miss.), 28 Southern 755;  
*Howes v. Trigg* (Va., 1909), 65 S. E. 538;

In the cases above cited, many of the decisions of this court on the subject are carefully reviewed and are regarded as supporting the conclusions reached. The opinions in *Yorke v. Conde*, *Thayer v. Pressey*, and *Howes v. Trigg*, are especially full and well considered.

It is interesting to note that the late Mr. Justice Peckham, then an associate judge of the Court of Appeals of New York, concurred in the opinion in *Yorke v. Conde*, as did Mr. Justice Holmes in the opinions rendered in *Jernegan v. Osborne* and *Thayer v. Pressey*.

The last case which has construed this statute is, we believe,

*Howes v. Trigg*, 65 S. E. 538.

This case deals with a state of facts almost identical with that now under consideration, and, after a careful and painstaking review of all the decisions

of this court, reaches the conclusion that a pledge of demands to a bank, as security for loans simultaneously made, creates a valid, equitable transfer (*pro tanto*) of the debt due from the United States.

In the same case, the Virginia court, going on to consider a local statute which was also drawn in question, makes the following observations, which are equally applicable to the federal statute now under consideration:

“A contrary rule would drive out of business every enterprise which was not backed by sufficient capital to meet all the demands of its current expenses as they accrued. It would make it impossible for men having a small capital successfully to engage in and conduct their business. It is essential to the existence of every mercantile, manufacturing or business enterprise to borrow money from time to time, and to do so they must be able to hypothecate as security such resources as may be under their control; and to enable them to negotiate loans to the best advantage, or to do so at all, the law must protect as far as possible commercial paper in the hands of *bona fide* holders, and be ‘careful not to throw doubt upon mercantile usages and the customs of business men.’ ”

It is thus seen that while this court is now for the first time called upon to determine the precise question whether or not the assignor of an undisputed demand against the United States which has been pledged for a contemporaneous mercantile loan

of equal amount can repudiate his act and withhold the thing which he has bound himself to regard as set aside for the benefit of the pledgee, yet the decisions of this court, as well as those of the State and inferior Federal courts that have considered the question, very plainly point to the conclusion that he cannot. The distinction between admitted debts and demands, and disputed, doubtful claims and choses in action has been assumed in some cases and quite clearly pointed out in others, as, for instance, in *Goodman v. Niblack*, 102 U. S. 556.

We think that the decisions can only be reconciled, the interests of legitimate business protected, and the interests of the government in maintaining free and unrestricted competition for its contracts preserved, by holding Section 3477, a statute designed, as its title states, solely for the protection of the government against fraud, applicable only to *disputed* or *litigated* claims. Assignments and pledges of undisputed contract debts are required by public policy, by the interests of the government, and by the interests and requirements of contractors, to be valid and binding as between the parties thereto. The interests of the government are amply protected by its own unquestioned right, even at common law, to disregard the as-

signment, *U. S. v. Robinson*, 9 Pet. 319; *Bonner v. Bonner*, 9 Wall. 156, and by a construction of the statute which makes such attempted assignments absolutely void as to all parties in the case of "claims" proper as distinguished from absolute debts and demands. As is ably pointed out in the opinion of Attorney-General Brewster, which we have quoted, the statute is only intended to apply to the former class of "claims" and its purpose is wholly foreign to commercial pledges and assignments of undisputed debts of the government as security for loans. "Claim" supposes debate, litigation, dispute, and the whole purpose of this section, and its context, as originally enacted, indicate that it is here so used and is not intended to be taken in its more broad' signification. Were the statute to be stretched so far; it would not only extend beyond, but would defeat its object, the protection of the public treasury.

Should it be stretched to such a length, what must be the result on large government works? Merchants and contractors whose finances are amply sufficient for the fulfilment of private contracts of similar magnitude will be prevented from competing, since a majority of merchants and contractors rely upon their ability to discount their credits and to secure financial aid from their banks on the faith of

pledges which assure the banks' priority as to demands pledged, in case of bankruptcy or other financial disaster.

As we have already pointed out, such a construction of the statute, by thus greatly restricting competition for government contracts, would seriously hamper the government in all its undertakings and increase the price which it must pay its contractors.

One point yet remains to be considered, and that of a nature, if resolved in our favor, to render immaterial all the preceding discussion of this case and to require the reversal of the judgment appealed from, regardless of all other issues.

The appellants are neither plaintiffs nor defendants in any suit at law or in equity. They are claimants and petitioners seeking the allowance of their equitable rights in a fund in a bankruptcy court. This fund is taken out of the hands of the bankrupt and administered by the court solely for the purpose of carrying out the bankrupt's financial obligations, and distributing the fund to his creditors in accordance with their just and equitable rights.



Appellants have an equitable right to reimbursement from the pledged demands, which general creditors are in no position to oppose. The latter can claim no equity in seeking to advance themselves by displacing the secured, whose loans have fed these assets.

It has been held in numerous cases that a bankruptcy court in administering an estate should regard and protect equitable liens and rights, even such as might not be enforceable by suit in law or equity.

In *In re Chase*, 59 C. C. A. 629, 631, 124 Fed. 753, 755, it appeared that the petitioners, having collected a considerable sum from sales of the bankrupt's goods, and having a lien thereon for their disbursements and charges, paid over the full amount in their possession to the trustee in bankruptcy. Thereafter they presented their claim for services and disbursements, which, it must be borne in mind, had been rendered and made in behalf of the bankrupt and at a time prior to the institution of bankruptcy proceedings. The court held that since the petitioners *had once had* a lien on the sums which they turned over, equity required that they should be given priority, in spite of the fact that their lien, according to every rule of law and of equity, so far as administered by the courts, had been lost, saying:

“The fact that under the circumstances, the petitioners paid the trustee the gross amount received by them, and delivered them the other assets, does not, as is clearly settled, deprive them of the right to apply to the court for payment of the sums for which they once had a lien. It is settled that a trustee in bankruptcy has no equities greater than those of the bankrupt, and that he will be ordered to do full justice, *even in some cases where the circumstances would give rise to no legal right, and, perhaps, not even to a right which could be enforced in a court of equity as against an ordinary litigant.* Williams’ Law of Bankruptcy (7th Ed.) 191. Indeed, bankruptcy proceeds on equitable principles so broad that it will order a repayment when such principles require it, notwithstanding the court or the trustee may have received the fund without such compulsion or protest as is ordinarily required for recovery in the courts either of common law or chancery. *Hutchinson v. Le Roy*, 113 Fed. 202, 205, 51 C. C. A. 159; *Hutchinson v. Otis*, 115 Fed. 937, 940, 53 C. C. A. 419; *Batchelder & Lincoln Company v. Whittemore* (C. C. A., decided April 23, 1903), 122 Fed. 255. Indeed, so sweeping is this rule that in *Hutchinson v. Otis*, 115 Fed., at page 940, 53 C. C. A. 422, we said that parties having an interest might not be held by a court of bankruptcy even to a mistake merely of law. Its breadth is also shown in *Lowell on Bankruptcy*, Sec. 310, where it is said that it has been established ever since 1742, beginning with *Scott v. Surman*, Willes 400, and that it is so sweeping that, in actions at law brought by assignees in bankruptcy, defendants may prevail on merely equitable defenses. How it happened that jurisdiction in bankruptcy became of an equitable nature is explained historically in an interesting way in *Robson’s Bankruptcy* (2d Ed.), at page 2. \* \* \* These principles fully justify a reasonable claim on the part of the petitioners. No

authority cited to the contrary, either under the present statutes of bankruptcy or any previous act, is of sufficient weight or force of reasoning to preponderate against this conclusion. Therefore, even if it could be sustained that the statutes denounce these assignments as contrary to their policy, the especial proposition correctly announced by Mr. Justice Brown would require that the decree under consideration should be reversed. \* \* \* \* It is also evident that under such circumstances there would be no equity in permitting the creditors to receive such enhanced value without compensation therefor. \* \* \* \* This is stated in *Clements v. Nicholson*, 6 Wall. 299, 312, 18 L. Ed. 786."

In *Hurley v. Atchison, T. & S. F. R. Co.*, 213 U. S. 126, S. C. Rep., 53 L. Ed. 729, the above case is cited, quoted from, and approved. In *Harley v. Atchison* the facts as stated by this court were as follows:

"The railway company (the claimant) had agreed that, without waiting until the 15th of the month to make its payment for coal theretofore purchased, it would, in order to accommodate the Mount Carmel Company (the bankrupt) and enable it to pay off laborers, and keep the mines going, make advance payments from time to time when necessary for those purposes. In pursuance of that agreement, and for the purposes stated, it had advanced \$57,304.16, with the understanding that it should be repaid by the subsequent delivery of coal; that the intervening bankruptcy proceedings of July 7 and the appointment of receivers by the court alone prevented the bankrupt from carrying out its agreement and delivering the coal as required by the contract."

On this state of facts, this court states that to regard the petitioner as an unsecured general creditor would result in destroying the full equitable obligations of the coal company and place the parties on an entirely different basis from that which they had contemplated, and saying that decisions directly in point may not be found, cites the following cases: *Ketchum v. St. Louis*, 101 U. S. 206-317, 25 L. Ed. 999-1003; *Hauselt v. Harrison*, 105 U. S. 401, 26 L. Ed. 1075; *Carr v. Hamilton*, 129 U. S. 252, 32 L. Ed. 669, 9 Sup. Ct. Rep. 295; *Fourth Street Nat. Bank v. Yardley*, 165 U. S. 634, 41 L. Ed. 55, 17 Sup. Ct. Rep. 439.

After quoting at length from *In re Chase*, the court adopts the following portion of the opinion of the Court of Appeals:

“ ‘The contract, after the new arrangement, remained as before. The coal company still had a right to mine coal on the same terms and conditions as before, and was bound to supply the daily needs of the railway company as before. The money paid in advance entitled the railway company to an amount of coal which the money so advanced would pay for according to the terms of the original contract. We think the inevitable meaning of the new arrangement, interpreted in the light of the conditions surrounding the parties, and as necessarily intended by them, was to set apart a sufficient amount of coal after it should be mined as security for the payment of advances made. This result is not expressed in the con-

ventional form of a mortgage or pledge, but the method of producing it was devised for the purpose of acquiring the needed money by the coal company, and of furnishing security for its repayment. If the parties intended the arrangement to be one for borrowing and securing the repayment of money, we ought, as between them, to so regard it, and to treat it as creating an equitable charge or lien, however inartificially it may have been expressed.'

Adding,

"We fully approve of this interpretation of the transaction. Equity looks at the substance, and not at the form. That the coal for which this money was advanced was not yet mined, but remained in the ground to be mined and delivered from day to day, as required, does not change the transaction into one of an ordinary independent loan on the credit of the coal company or upon express mortgage security. It implies a purpose that the coal, as mined, should be delivered, and is, from an equitable standpoint, to be considered as a pledge of the unmined coal to the extent of the advancement. The equitable rights of the parties were not changed by the commencement of bankruptcy proceedings. All obligations of a legal and equitable nature remained undisturbed thereby. If there had been no bankruptcy proceedings, the coal as mined was, according to the understanding of the parties, to be delivered as already paid for by the advancement.

"We think the conclusions of the Circuit Court of Appeals are right, and its judgment is affirmed."

Under the rule laid down in the cases above cited, it is not even essential that the court should find that our lien on the pledged demands was enforceable by suit, even in equity. We conceive the underlying

principle of these cases to be that it would be a reproach to the law were it to direct its officers, appointed for the sole purpose of administering a bankrupt estate in accordance with the rights, equities and priorities of the respective creditors, to disregard any obligations, rights or priorities which the bankrupt ought, in equity and good conscience, to regard.

Respectfully submitted,

GEORGE E. DE STEIGUER,

FREDERICK BAUSMAN,

DANIEL KELLEHER,

Solicitors for Appellants.

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

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## No. 31.

THE NATIONAL BANK OF COMMERCE OF  
SEATTLE, APPELLANT,

*vs.*

R. E. DOWNIE, TRUSTEE; ST. PAUL & TACOMA LUMBER COMPANY, BARBER ASPHALT PAVING COMPANY, MUKILTEO LUMBER COMPANY, GAMWELL & WHEELER, BANKRUPTS, AND THE SEATTLE NATIONAL BANK, APPELLEES.

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## No. 32.

THE SEATTLE NATIONAL BANK OF SEATTLE,  
APPELLANT,

*vs.*

R. E. DOWNIE, TRUSTEE; ST. PAUL & TACOMA LUMBER COMPANY, BARBER ASPHALT PAVING COMPANY, MUKILTEO LUMBER COMPANY, GAMWELL & WHEELER, BANKRUPTS, AND NATIONAL BANK OF COMMERCE, APPELLEES.

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APPEAL FROM THE UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE NINTH CIRCUIT.

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### SUPPLEMENTAL BRIEF OF APPELLEES.

The appellants seem to base their claim for a reversal in this cause upon the following grounds:

1. That these are undisputed claims.

2. That the statute in question does not apply to undisputed claims.

3. That the statute does not cover pledges of Government claims made as security for debt.

4. That a bankrupt court should recognize their lien upon these funds, even though they might not be enforceable in direct proceeding at law or in equity.

We shall examine these contentions in the order above indicated.

## I.

### **Are These Claims Undisputed Claims?**

There is nothing whatever in the record in these cases to justify the assumption that these claims are undisputed.

The statement of facts recite they "*are claims for money due from the Government of the United States to the said bankrupts.*" "That all of such assignments were made after the entering into of said contracts and after *partial* performance thereof by said bankrupts, below the *allowance of any of such claims or the ascertainment of the account due thereon*, or the issuance of any warrant for the payment thereof."

We submit that no claim of this character can be called "undisputed" until the contract out of which the claim arises is completely performed and there is no showing at all in these cases that these contracts ever were actually completed. Certainly they were not completed at the time the assignments were made. What deductions, offsets or credits the Government might claim by reason of delays in delivery, defective materials, or the numberless other controversies that arise between the parties to contracts of this character, cannot usually be settled until the final comple-



tion of the contract. We assert that it is much safer for this court to assume that these claims were disputed claims. An inspection of these claims as shown in the record will disclose that they are simply bills or invoices of lumber and other materials shipped by the bankrupts to various departments of the Government. No showing whatever is made that these prices were in accordance with the contract, that the materials were of the character or quality called for by the contract or that they were ever even received by the Government. No copy of any contract is shown in the record. No endorsement of correctness by any Government official or any single action by anybody on the part of the Government, the other party to the contract, that these invoices or bills were correct and in accordance with the terms of the contract.

We submit that the statute itself defines what "undisputed claims" are. They are claims that have been allowed, the amount due thereon ascertained and a warrant issued in payment thereof. Until all these steps have been taken no claim can be called undisputed, and before all of them have been taken, the statute declares all assignments "absolutely null and void." In order to make these restrictions still more effective the statute further declares that the assignment must "recite the warrant for payment." Obviously this provision cannot be complied with until the claim has been allowed, the amount due thereon ascertained and the warrant for payment actually issued. If it was the intention of Congress that this statute should only cover "disputed claims" then it must be admitted that Congress considered all claims prior to allowance, ascertainment of amount due and issuance of warrant as "disputed claims" Congress certainly intended to prohibit the assignment of *some* claims against the Government, and if its intention is to be determined as covering only disputed claims, then it must follow that Congress considered all claims against the

Government prior to allowance and the issuance of the warrant as disputed claims.

It seems too obvious for argument that the claims covered by this statute are those which require an allowance and ascertainment of amount due by some department of the Government. And can it be said that claims of the character of those in the case at bar, claims based upon a contract not performed, do not require any allowance or ascertainment of the amount due. The stipulation of facts settles this question because it expressly recites that these claims had not been allowed nor had the amount due thereon been ascertained. The Treasury Department certainly would not issue its check or warrant in payment of these claims until they had first been allowed by the department under whose jurisdiction these contracts were. Undoubtedly Treasury checks, pension warrants, etc., while in a sense claims against the United States, are not covered by this statute, because there is no allowance to be made of these, and the amount due has already been ascertained.

## II.

### **Does the Statute in Question Apply to Disputed Claims?**

The legislation relating to the transfer or assignment of claims against the Government is set forth at length in the appellants' brief on pages 15 to 19, inclusive.

The first act, that of 1846, prohibited the payment of any claim allowed by Congress, to any other person than the claimant, except upon warrant of attorney, executed after the allowance of the claim, and in accordance with certain formalities prescribed.

The next act, that of February 26, 1853, enacts as its first section what now constitutes section 3477, Revised Statutes, together with the last part of the act of 1846.

The seventh section of this later act provides that its provisions, as well as those of the act of 1846, shall "apply and extend to all claims against the United States, whether allowed by special act of Congress or arising under general laws or treaties, or in any other manner whatever."

Not a single word or sentence in the statutes about disputed or undisputed claims. The statute in its terms makes no distinctions whatever, but broadly and literally declares that it applies to all claims. If Congress has the power to prohibit the transfer and assignment of all claims against the Government, then we submit that it has diligently and intelligently sought to exercise that power. If any exceptions are to be recognized, their recognition cannot be justified by any literal reading of the act, but must be founded on extraneous sources.

As will be noted, the first act applied only to those claims requiring congressional action, but after seven years' experience with the workings of this statute Congress went deeper into the subject, and enacted the later act, covering or attempting to cover at least all claims of every character. It is apparent that it did not attempt to limit the scope of the previous act, but on the contrary to enlarge its scope. If it was the intention of Congress that the act should apply only to disputed claims, it could have easily said so, or could have simply enlarged the provisions of the earlier act, by also including claims prosecuted in the Court of Claims or in the other courts according to their jurisdiction. If the act applies only to disputed claims, why did Congress provide that all assignments are void unless they actually recite the warrant for payment? Does not that provision alone sufficiently indicate the intention of Congress, that all questions relating to a claim must be finally adjusted before it could be assigned, and that the issuance of the warrant is the act that alone evidences the final allowance and settlement of all dispute with reference to the claim.

The effect of sustaining the contention of the appellants

in this case, would be to sweep away substantially all the barriers which Congress has thrown around the trafficking in Government claims. Any and all claims could be assigned, and they would only be void in case the Government should fail to contest or dispute them. Such a construction, if made by this court, would permit the Government officials to recognize all assignments of claims that they did not see fit to dispute. It would permit unlimited trafficking in claims, and while the Government officials need not if they see fit, recognize the assignees, they would be authorized to by such action upon the part of this court. The appellants in support of their contention respecting undisputed claims set forth at length in their brief, an opinion written May, 1883, by Solicitor General Phillips and concurred in by Attorney General Brewster. In this opinion the conclusion is reached that this statute does not apply to disputed claims. The opinion is a refined and technical piece of statutory construction, but seems in the final analysis to be based upon the theory that the statute was aimed at champertous contracts. How the solicitor general could reach such a conclusion in the face of the decision in *Spofford vs. Kirk*, 97 U. S., 484; 24 L. Ed., 1032, which he states he had read, is a little difficult to see. No hint of champerty whatever in this case. *Spofford* had nothing to do whatever with the prosecution of the claim of *Kirk*. He was an innocent purchaser of some orders drawn by *Kirk* upon his attorneys and the litigation that subsequently arose was between him and *Kirk* over the payment of those orders, after the final adjustment and payment of *Kirk's* claim. This court refused *Spofford* any relief, not on the ground that the transaction was champertous, but simply and solely for the reason that these orders constituted an equitable assignment of a portion of *Kirk's* claim against the Government and as such were void as being in contravention of the terms of this statute.

Also in the case of *Ball vs. Halsell*, 161 U. S., 72, no

reference is made as to the contract, entered into between Ball and Halsell's decedent, being champertous. The court simply holds that this contract, having by its terms vested Ball with an interest in this claim against the Government, was void because of this statute.

In the still later case of *Nutt vs. Knut*, the point was expressly raised that Nutt's contract was void as against public policy, but this court upheld the contract upon this point, and decided that it was void under the terms of this statute.

In none of the exceptions which this court has permitted to be made from the terms of this statute have they ever been predicated upon the ground that the claims were disputed or champertous. It is true that this court, in referring to the evils which it believed this statute sought to correct, discusses the dangers of permitting others than the original claimant to become interested in the claim and by their influence and assistance procuring an allowance which might be unjust to the Government. But all this language applies equally well to the case at bar; applies to all claims before their final allowance and adjustment. In none of the cases cited by the appellants from other courts, has this distinction between disputed and undisputed claims been made the basis of the decision.

A reading of the entire opinion in the case of *Dowell vs. Cardwell*, 4 Sawr., 217 Fed. Cas., 4039, a portion of which is quoted in the appellant's brief, will, we believe, show that it is not so strongly in favor of the appellant's contention as the extracts quoted would seem to indicate. The court holds that the act of Congress providing for the payment of the claims assigned recognized the rights of the assignee. We quote from the opinion the following:

"Besides, this legislation seems to recognize the right of the assignee, who is in equity the owner and entitled to receive the money. It must have been known to Congress that the vouchers for the supplies furnished to the expedition of 1854, had in many instances changed hands. To equitably adjust and

settle these claims involves the determination of who is entitled to the payment therefor. This seems to have been the construction placed upon the act by the department."

With reference to the case of *York vs. Conde*, 174 N. Y., 486, it is to be noted that this case was taken to this court by writ of certiorari, and dismissed for lack of jurisdiction, the court here holding that the construction of this statute was not necessarily involved in the decision of the case.

*York vs. Conde*, 168 U. S., 642; 18 Sup. Ct. Rep., 234; 42 Law Ed., 611.

The cases of *York vs. Conde* (*supra*), *Jernegan vs. Osborne*, 155 Mass., 207; *Thayer vs. Pressy*, 175 Mass., 233, and *Howes vs. Triggs*, 65 S. C., 538, are cited by appellants in support of their contention to the effect that this statute is for the protection of the Government, and that once the Government has paid over the money its interest ceases, and the assignments are good as between the parties. Just this identical contention was made in *Nutt vs. Knut* and the cases of *York vs. Conde*, and *Jernegan vs. Osborne* were cited to this court upon that point, but the ruling of the court was that the assignment as between the parties was void.

See synopsis of brief of defendants in error in *Nutt vs. Knut*, U. S. Sup. Ct., 50 Law Ed., 305.

It is further to be noted that in the later case of *Thayer vs. Pressy* (*supra*) the Massachusetts court, after reviewing the cases, including that of *Jernegan vs. Osborne*, draws the distinction between the assignment of a naked claim and that in which the claim passed as an incident in a larger transaction.

## III.

## Does the Statute Cover a Pledge of a Government Claim as Security for Debt?

A complete answer to this question seems to us to be found in the words of the statute itself:

“All transfers and assignments made of any claims upon the United States, or any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor  
\* \* \* shall be absolutely null and void.”

It is to be noted further that these assignments are absolute in form and the stipulation shows that the amount due the banks is greater than the amount of the claims. So that to all intents and purposes these assignments are absolute and complete assignments of these claims. In the case of *St. Paul vs. Duluth Ry. Co. vs. United States*, 112 U. S., 733; 28 L. Ed., 861, this court had under consideration the pledge of a claim against the United States. In speaking of this the court says:

“It is a voluntary transfer by way of mortgage, for the security of a debt, and finally completed and made absolute by a judicial sale. If the statute does not apply to such cases, it would be difficult to draw a line of exclusion which leaves any place for the operation of the prohibition.”

So, too, in the case of *Nutt vs. Knut*, *supra*, the plaintiff there was given a lien upon the claim and this court said that this in effect gave him an interest in the claim itself.

In the case at bar it is idle to say that the banks are not claiming any interest in these claims; as a matter of fact they are claiming the entire proceeds.

A considerable portion of the appellants' brief is devoted to a discussion of the effect upon the Government contract-

ing business, of a decision by this court invalidating pledges of contractor's claims. There is nothing to show, however, that banks generally do loan money upon this class of securities, and we do not believe they do. Bankers generally would know of the existence of this statute, and in the face of its plain terms we doubt that they have ever regarded these assignments as good securities. We cannot but feel that the disastrous effects predicted by the appellants is largely fanciful and that the business of Government contracting will go on as serenely as ever, whatever the decision of this court may be. We believe that as the business is carried on today, Government contractors are obliged to finance their contracts on other securities than their claims against the Government, and if this court should hold these assignments void, the business would proceed along the lines it has always done. Gamwell & Wheeler did not seem to have any trouble in securing thousands of dollars' worth of materials from our clients without giving any assignments of their claims as security, and it would seem that cash ought to be secured nearly as easily as materials.

However all this may be, it seems to us that this is not the proper forum in which to present such an argument. This appeal might very properly be made to Congress, and if that body should find that the business of the Government was suffering, the statute would undoubtedly be amended to afford the necessary relief. Congress has already prohibited the assignment of Government contracts, and we do not believe that it would now consent to the assignment of contractor's claims. We believe that the intention of Congress is that the Government shall deal directly with the parties with whom it originally contracts, and that outsiders cannot by any proceeding be brought into the matter. But if the conditions will become as appellants predict, an appeal to Congress is the proper step for relief, and there the Government side, as well as that of the contractors, may be considered.



## IV.

**Will a Bankrupt Court Recognize a Lien upon These Funds Even Though Such Lien Might be Unenforceable in a Direct Proceeding at Law or in Equity?**

The contention of the appellants in this respect resolves itself into the novel proposition of law, that they have greater rights as against the trustee in bankruptcy than they would have against the bankrupts themselves prior to their adjudication as bankrupts. It is true that the trustee takes the property of the bankrupt burdened with its liens; that he takes only the title which the bankrupt has, but he takes *all* the title of the bankrupts. If a lien be for any reason invalid, it is his duty to refuse to recognize it, and if he fails to do so, any creditor may raise the question. If these assignments are valid; if by virtue of them the banks become the owners of these claims, then it is the duty of the trustee to turn the funds received from them over to the banks; but if these assignments are void because of the violation of this statute, declaratory as it is of a rule of public policy, then surely they cannot expect a court to give them any greater rights in a bankruptcy proceeding than it would in any other proceeding.

We respectfully submit that the decision of the lower court is in conformity with the law as laid down by this court and should be affirmed.

H. D. COOLEY,  
J. E. HORAN,  
W. A. PETERS,  
J. H. POWELL,  
HAROLD PRESTON,  
*Solicitors for Appellees.*



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# In the Supreme Court of the United States

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OCTOBER TERM 1910

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THE NATIONAL BANK OF COMMERCE  
OF SEATTLE, Appellant,

vs.

R. E. DOWNIE, Trustee; ST. PAUL & TACOMA LUMBER COMPANY; BARBER ASPHALT PAVING COMPANY, MUKILTEO LUMBER COMPANY, GAMWELL & WHEELER, BANKRUPTS, and THE SEATTLE NATIONAL BANK, Appellees.

No. 203

THE SEATTLE NATIONAL BANK OF  
SEATTLE, Appellant,

vs.

R. E. DOWNIE, Trustee; ST. PAUL & TACOMA LUMBER COMPANY, BARBER ASPHALT PAVING COMPANY, MUKILTEO LUMBER COMPANY, GAMWELL & WHEELER, BANKRUPTS, and NATIONAL BANK OF COMMERCE, Appellees.

No. 204

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APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT.

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## Brief of Appellees

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H. D. COOLEY,

J. E. HORAN,

Wisconsin Blk., Everett, Wash.

W. A. PETERS,

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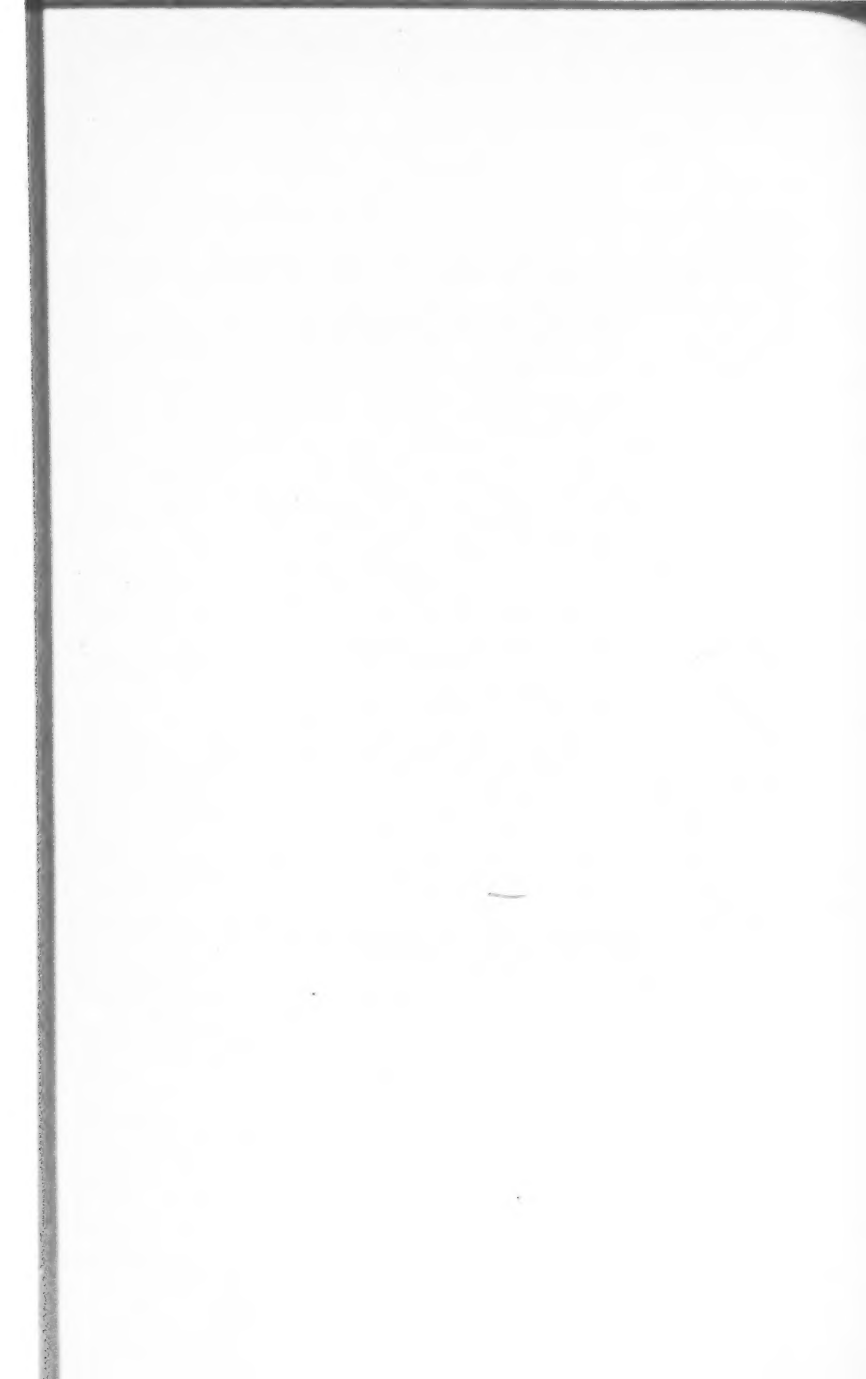
*Solicitors for Appellees.*

ST. PAUL & TACOMA LUMBER COMPANY.

BARBER ASPHALT PAVING COMPANY.

MUKILTEO LUMBER COMPANY.

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# In the Supreme Court of the United States

OCTOBER TERM 1910

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THE NATIONAL BANK OF COMMERCE  
OF SEATTLE,

Appellant,

vs.

R. E. DOWNIE, Trustee; ST. PAUL & TA-  
COMA LUMBER COMPANY; BARBER  
ASPHALT PAVING COMPANY, MUK-  
ILTEO LUMBER COMPANY, GAM-  
WELL & WHEELER, BANKRUPTS,  
and THE SEATTLE NATIONAL BANK,  
Appellees.

No. 203

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THE SEATTLE NATIONAL BANK OF  
SEATTLE,

Appellant,

vs.

R. E. DOWNIE, Trustee; ST. PAUL & TA-  
COMA LUMBER COMPANY, BARBER  
ASPHALT PAVING COMPANY, MUKIL-  
TEO LUMBER COMPANY, GAMWELL  
& WHEELER, BANKRUPTS, and NA-  
TIONAL BANK OF COMMERCE,  
Appellees.

No. 204

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APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT.

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## Brief of Appellees

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### STATEMENT.

The firm of Gamwell & Wheeler, composed of Arthur Gamwell and Phillip Wheeler, were for some time prior to April 16th, 1907, engaged in business in the City of Seattle. On that date they were adjudged bankrupts in the United States District Court for the Western District

of Washington, and thereafter, R. E. Downie was duly elected and qualified as trustee in the bankruptcy proceedings.

The National Bank of Commerce of Seattle, one of the appellants, filed its claim against said co-partnership with the trustee, amounting to \$37,149.85, and submitted with said claim, as security therefor, certain claims against the government of the United States for money due the bankrupts upon account of contracts entered into between said bankrupts and the United States for the furnishing of materials to various departments of the government, and which claims were assigned by the bankrupts to the bank as collateral security for this indebtedness.

At the same time, the other appellant here, the Seattle National Bank, filed its claim against said bankrupts in the sum of \$22,582.19 and also submitted, as security for such indebtedness, other assigned claims from the bankrupts for materials and supplies furnished the government of the United States under contracts between the bankrupts and the United States.

The respondents filed objections with the Referee in Bankruptcy to the allowance of these securities, claiming that the assignments of these claims were void as being in violation of the provisions of the Revised Statutes of the United States, Sections 3777 and 3477, and also in violation of Section 60 of the Bankrupt Act. All parties joined in a stipulation as to the facts with relation to the assign-

ments of said claims, which, with the omission of the title and preliminary recitals, is as follows:

"It is hereby stipulated and agreed by and between the Seattle National Bank, by Bausman & Kelleher, its attorneys; the National Bank of Commerce, by Geo. E. de Steiguer, its attorney; R. E. Downie, trustee of the above entitled bankrupts, by Messrs. Kerr & McCord, his attorneys; the Barber Asphalt Paving Company and the Mukilteo Lumber Company, by their attorneys, Peters & Powell and Cooley & Horan, that the facts in relation to the claims against the government of the United States assigned by said bankrupts to the above mentioned banks as collateral security for the indebtedness due from said bankrupts to said banks, and to the allowance of which claims as security for such indebtedness the above named trustee and the Barber Asphalt Paving Company and the Mukilteo Lumber Company have objected to, are as follows:

"That each and all of said claims against the United States Government, so assigned, were claims for money due from the Government of the United States to the said bankrupts, upon account of contracts entered into between said bankrupts and the United States, for the furnishing of materials by said bankrupts to various departments of said government; that said assignments were each and all voluntarily made in consideration of a loan made by said bank to said bankrupts at the time of said assignments, and as collateral security for the repayment of said loans and without notice to the other creditors of said bankrupts. That all of such assignments were made after the entering into of said contracts and after partial performance thereof by said bankrupts before the allowance of any of such claims or the ascertainment of the amount due thereon, or the issuance of any warrant for the payment thereof, and that none of said assignments were executed in the presence of any witnesses at all, and that none of them recite any warrant for the payment

of the claim assigned, and that none of them were acknowledged by an officer having authority to take acknowledgments of deeds, or any other acknowledging officer at all, and that none of them were certified as being acknowledged by any such officer. The said loans to each of said banks exceeded in amount the value of said collaterals so assigned to secure the same, and there is now due to each of said banks on account of said loans an amount much in excess of the value of the said collaterals so assigned to each of said banks respectively. The claims of said banks and the objections thereto on file are made a part hereof."

The referee in bankruptcy allowed the claims for preference as made by the appellants. Thereupon, the appellees herein, except the trustee, petitioned for a review of the decision of the referee, and upon this review the judge of the District Court allowed the claims of the banks as general debts, but disallowed their claims for preference.

The matter was then taken by appellants, by appeal and petition for review, to the United States Circuit Court of Appeals for the Ninth District, and upon the 11th day of May, 1908, that Court rendered its decision affirming the District Court (161 Federal Reporter 839). From this decision of the Circuit Court of Appeals, the appellants have appealed to this Court.

#### ARGUMENT.

The appellees in the previous hearings had of this matter relied entirely upon the provisions of Section 3477 of the Revised Statutes of the United States as a basis for their contention that these assignments were void, and are



content to abandon in this Court the other objections made by them, and to rely entirely upon the effect of this statute. For convenience of reference we will quote this statute at length :

"Sec. 3477. All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same."

That Congress has the right to legislate in the manner in which it has done in this section cannot be doubted, nor is that right questioned by appellants. It is entirely within the powers of Congress to control the disposition and enforcement of all claims against the government, and that Congress intended by this enactment to absolutely nullify all assignments of claims against the government, seems, from the language of the act, so plain as to require no argument.

That the assignments which are the basis of this con-

troversy conflict directly with the plain provisions of this statute, can be readily seen by a comparison of the stipulation of facts with this statute. It will be noted that the statute declares that all assignments of any claim upon the United States, or any part or share thereof or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, are absolutely null and void, but provides a manner in which these assignments may be made by compliance with the formalities specified therein after the allowance of such claims and the ascertainment of the amount due and the issuance of a warrant for the payment thereof.

It will be seen by the stipulation of facts that these assignments in controversy are:

First: Of claims against the United States.

Second: That they are absolute assignments.

Third: That they were made before the allowance of such claims or ascertainment of the amount due, or the issuance of a warrant for the payment thereof.

Fourth: That the assignments were not executed in the presence of any witnesses at all. That none of them recited any warrant for the payment of the claim assigned and that they were not acknowledged at all in the manner provided for by said statute.

These assignments violate in every particular the plain terms of this statute and as such are declared by the statute to be absolutely null and void; not voidable, nor void as against the government of the United States, but

void for any and all purposes whatsoever.

This Court has had occasion to pass upon this statute many times since this enactment, and we submit that an examination of these cases will disclose that, while the Court has recognized some exceptions to the general rule, that assignments of the character appearing in this case are not within such exceptions, but are absolutely void.

*United States v. Gillis*, 95 U. S. 407, 416, 24 L. Ed. 503;

*Spofford v. Kirk*, 97 U. S. 484, 24 L. Ed. 1032;

*Ball v. Halsell*, 161 U. S. 72, 16 Sup. Ct. 554, 40 L. Ed. 622;

*Nutt v. Knut*, 200 U. S. 12, 26 Sup. Ct. 216, 50 L. Ed. 348.

This section was construed by this Court in the case of the *United States v. Gillis*, supra, (decided Dec. 10th, 1877.) This suit was brought upon a claim of John H. Ryan against the Federal Government for property taken by the military officers of the United States in March, 1865. Ryan transferred this claim against the United States to the plaintiff's intestate, Thos. H. Gillis, and consented to the bringing of an action therein in the name of Gillis. Judgment was given in the Court of Claims in favor of Gillis as assignee, and against the United States Government, and from which decision the government appealed. In referring to the statute the Court say:

"We discover nothing in reason, nothing in the mischief the act was plainly intended to remedy, and nothing in the language employed tending to warrant the admis-

sion of any exceptions from the comprehensive provisions made; nothing that can justify our holding that, when Congress said all transfers or assignments, partial or entire, absolute or conditional, of claims against the United States shall be null and void, they meant they should be in operation only when presented to the accounting officers of the treasury, but effective when presented everywhere else."

This Court overruled the Court of Claims and held that this section is of universal application and covers all claims against the United States, in every tribunal in which they may be asserted.

In the case of *Spofford v. Kirk*, *supra*, (decided November 11th, 1878), the facts were as follows:

Kirk had a claim against the United States for supplies furnished to the army during the rebellion and drew two orders upon the parties who were representing him in the prosecution of his claim, which orders were accepted by said parties. Afterwards these orders were transferred to Spofford, who became the assignee and holder of both of them for value and in entire good faith. Upon the issuance of the treasury warrant, Kirk, the assignor, refused to endorse the warrant and Spofford filed his bill to compel, by specific performance, the assignment and delivery to him of the treasury warrant. The claim made by Spofford was, that these assignments created in equity an absolute and irrevocable appropriation of their contents, and that when collected, the sums named in the orders were held by the drawees in trust for the payees, or their assignees, and this Court upheld this contention, that

these orders constituted an equitable assignment of the claim. But the Court proceeding to the question as to whether such an assignment as this can be enforced in equity, even against the maker, holds that this Act of Congress renders all claims against the government alienable alike in law and equity, for every purpose and between all parties.

The Court in referring to the language of this statute, says:

"It would seem to be impossible to use language more comprehensive than this. It embraces alike legal and equitable assignments. It includes powers of attorney, orders, or other authorities for receiving payment of any such claim, or any part or share thereof. It strikes at every derivative interest, in whatever form acquired, and incapacitates every claimant upon the government from creating an interest in the claim in any other than himself."

The same claim was apparently made in this case that the appellants are now making in the case at bar, viz: that this act was intended for the protection of the government and did not invalidate assignments between the parties thereto. The remarks of the Court in disposing of this contention show very clearly the protection which the enforcement of this statute gives to the government, and the language applies equally well to the case at bar as it did in the Spofford case:

The Court say:

"What the frauds were against which it was intended to set up a guard, and how they might be perpetrated, nothing in the statute informs us. We can only infer from its provisions what the frauds and mischiefs had been,

or were apprehended, which led to its enactment. One, probably, was the possible presentation of a single claim by more than a single claimant, the original and his assignee, thus raising the danger of paying the claim twice, or rendering necessary the investigation of the validity of an alleged assignment. Another and greater danger was the possible combination of interests and influences in the prosecution of claims which might have no real foundation, of which the facts of the present case afford an illustration. Within our knowledge there have been claims against the government interests in which have been assigned to numerous persons, and thus an influence in support of the claims has been brought into being which would not have existed had assignments been impossible. We do not say that the passage of the act was induced by these considerations. It is enough that frauds or wrongs upon the treasury were possible in either of these ways, and it may be that Congress intended to close the door against both. However that may be, the language of the act is too sweeping and positive to justify us in giving it a limited construction. We cannot say, when the statute declares all transfers and assignments of the whole of a claim, or any part or interest therein, and all orders, powers of attorney, or other authority for receiving payment of the claim, or any part thereof, shall be absolutely null and void, that they are only partially null and void, that they are valid and effective as between the parties thereto, and only invalid when set up against the government."

Appellants' counsel in commenting upon this case intimated that it involved the assignment of a part of a disputed claim then in controversy, but the facts show that Spofford became the owner of this claim after the written assurance that Kirk had been allowed by the government something over \$9,000.00, in other words; Spofford's assignment was taken after the allowance of the claims. In

the case at bar these assignments were taken before the allowance of the claims, or ascertainment of the amounts which might be paid upon them, and there is nothing in the record to show that no dispute had arisen or was likely to arise between the government and Gamwell & Wheeler upon account of the fulfillment of the contracts, upon which these claims were based.

The case of *Ball v. Halsell*, *supra*, (decided March 2nd, 1896), was an action brought by Ball to recover on a contract entered into between him and defendant's decedent, by which Ball was appointed attorney in fact to prosecute a claim against the government upon account of Indian depredations, and Ball was to receive one-half of all such moneys for his services. This was a case between the parties to a contract respecting the payment of a claim by the United States which the government had paid and had no further interest in the matter.

After quoting this Section 3477, the Court holds that this contract is forbidden by the statute, and after speaking of the case of *Spofford v. Kirk*, *supra*, says:

"That decision has never been overruled or questioned by the Court, although the act has been held not to apply to general assignments made by a debtor of all his property for the benefit of his creditors, whether under a bankrupt or insolvent law or otherwise."

In the case of *Nutt v. Knut*, *supra*, (decided in 1906), the defendants made a contract with one James W. Denver, whereby Denver was to prosecute a claim against the United States government and was to receive one-third of

the amount realized, which payment was "made a lien upon said claim and upon any draft, money or evidence of indebtedness which may be issued thereon." The attorney was successful in his efforts, and sums amounting to \$125,000.00 were appropriated by Congress in payment of the claims. Of all these payments except the last, the attorney, Denver, who was the testator of the plaintiff, Nutt, had received his share under the contract, but the last was refused him. He sued for this in the State Court of Mississippi and prevailed on appeal to the Supreme Court of that state; but on appeal from the State Court to this Court, it refused him a lien upon the fund in question upon the ground that it considered the assignment was in contravention of Section 3477. The case, we take it, is all the stronger in view of the fact that the Supreme Court of a state was reversed, and that this Court found that the suit was not for lobbying services but in effect in good faith; and any Court under such circumstances would have gone far to have seen that a client should pay the proportion that he had agreed to pay his attorney, of money which he had in his pocket at that time, through the skill and services of such attorney, had it not been prevented by the statutes.

In this case the Court in passing upon the merits of the case as affected by the Section 3477, on pages 20 and 21, say:

"That section, as we have seen, declares null and void all transfers and assignments of a claim upon the United States, or of any part or share thereof, or any interest



therein, whether absolute or conditional, and whatever may be the consideration thereof, and all powers of attorney, orders, or other authorities for receiving payment of any such claim or of any part or share thereof, unless they are freely made and executed after an allowance of the claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. This statute has been the subject of examination in many cases.

\* \* \* If regard be had to the words as well as to the meaning of the statute, as declared in former cases, it would seem clear that the contract in question was, in some important particulars null and void upon its face. We have in mind that clause making the payment of the attorney's compensation a lien upon the claim asserted against the government, and upon any draft, money, or evidence of indebtedness issued thereon. In giving that lien from the outset before the allowance of the claim and before any services had been rendered by the attorney, the contract in effect, gave him an interest or share in the claim itself and in any evidence of indebtedness issued by the government on account of it. In effect or by its operation it transferred or assigned to the attorney, in advance of the allowance of the claim such an interest as would secure the payment of the fee stipulated to be paid. All this was contrary to the statute; for its obvious purpose, in part, was to forbid anyone who was a stranger to the original transaction to come between the claimant and the government, prior to the allowance of a claim, and who, in asserting his own interest or share in the claim, pending its examination, might embarrass the conduct of the business on the part of the officers of the government. We are of opinion that the State Court erred in holding the contract, on its face, to be consistent with the statute."

Counsel for appellant intimate in their belief that the assignments in the cases of *Ball v. Halsell* and *Nutt v. Knut* were void because the contracts in themselves were

champertous, but in the *Nutt v. Knut* case the contract is expressly upheld, even though the point was made and argued in that Court by the defendants that the contract was void as being against public policy.

The only exceptions to the general rule announced in the foregoing cases that will be found to have been made by this Court, are the following:

FIRST: The statute has been held not to apply to an involuntary transfer by operation of law:

*Erwin v. United States*, 97 U. S. 393, 397, 24 L. Ed. 1065;

*Goodman v. Niblack*, 102 U. S. 556, 26 L. Ed. 226;

*Butler v. Goreley*, 146 U. S. 303; 13 Sup. Ct. 84, 36 L. Ed. 981;

*Price v. Forrest*, 173 U. S. 410, 423, 19 Sup. Ct. 434, 43 L. Ed. 749;

*St. Paul & Duluth R. R. v. United States*, 112 U. S. 733, 28 L. Ed. 861.

SECOND: That it does not affect a partnership contract to furnish supplies to the government, or a promise by one partner to pay to another a sum already due him under a partnership agreement out of money to be received from the government for such supplies.

*Hobbs v. McLean*, 117 U. S. 567, 6 Sup. Ct. 870, 29 L. Ed. 940.

THIRD: That it does not affect the right of a mortgagee of real estate leased to the United States, or the pledgor of the funds thereof to recover from the mort-

gagors or pledgors the amount of funds paid to them by the United States.

*Freedman's Savings & Trust Co. v. Shepherd*, 127 U. S. 494, 8 Sup. Ct. 1250, 32 L. Ed. 163, and *Shepherd v. Thomson*, Id.

FOURTH: That the government cannot be compelled to pay a second time a claim which it has paid to another under a power of attorney from the claimant.

*Bailey v. United States*, 109, U. S. 432, 3 Sup. Ct. 272, 27 L. Ed. 988.

#### FIRST.

The cases of *Goodman v. Niblack*, *supra*, and *Erwin v. United States*, *supra*, merely hold that this section does not apply to a voluntary assignment of a claim against the United States, which is included in an assignment made by the insolvent debtor of all his effects for the benefit of his creditors; and in the *Niblack* case, the assignment of the claim was long before the completion of performance of the mail contract, and the government had recognized it by permitting the trustees to perform the contract and receive pay under it for years, and further than that, Congress had by a special act recognized the validity of the assignment.

The case of *Price v. Forrest*, *supra*, holds that an order of the State Court appointing a receiver of a claim against the government and ordering the claimant to assign the same to such receiver to be held subject to the order of the Court for the benefit of those entitled thereto, is not pro-

hibited by this statute but placed it upon the express ground that it is an assignment by operation of law, such as was upheld in the case of *Erwin v. United States* and *Goodman v. Niblack*, and reconciles its ruling in this case with the case of *Ball v. Halsell* and the case of *St. Paul & Duluth Railroad Company v. United States*, 112 U. S. 733, by stating that the assignments were held to be void in these latter cases, because they were voluntary assignments.

The effect of the rulings of this Court in cases of *Goodman v. Niblack*, *Erwin v. United States* and *Price v. Forrest* are authority for the contention of the appellees in this case that the effect of the bankruptcy proceedings against *Gamewell & Wheeler* is to vest in the trustee the title to these claims. The trustee becomes the holder of these claims by virtue of the involuntary transfer through the bankruptcy proceedings.

The case of *St. Paul & Duluth Railway Company v. United States*, 112 U. S. 733, (decided January 5th, 1885), also recognizes the distinction which is made in the cases of *Erwin v. United States*, *Goodman v. Niblack*, and *Price v. Forrest*. The facts in this case were as follows:

The plaintiff company bought in at mortgage foreclosure all of the property of the Lake Superior & Mississippi Railroad Company. The latter company had a contract with the United States government for the carrying of mails between St. Paul and Duluth, for which it had an unpaid claim. The plaintiff claimed this amount due for

carrying mails as belonging to it under the mortgage foreclosure and sale. The Court held that this claim of plaintiff could not be sustained as being in plain contravention of Section 3477, reviewing both the Erwin and the Goodman cases, but distinguishing the present case therefrom as being, "A voluntary transfer by way of mortgage for the security of a debt and finally completed and made absolute by judicial sale. If the statute does not apply to such cases it will be difficult to draw a line of exclusion which leaves any place for the operation of a prohibition."

## SECOND.

The facts in the case of *Hobbs v. McLean, supra*, are substantially as follows:

Peck made a bid for the supplying of the army of the United States a certain amount of wood and hay, and believing that the contract would be awarded to him, entered into partnership with McLean and Harmon for the purpose of carrying out the contract with the United States which it expected to make. The contract was afterwards awarded to Peck. McLean and Harmon did all the work that was done and advanced all the money that was expended in performing the contract, except about \$100.00 which was furnished by Peck. The partners delivered the wood and received some payment on account, but being dissatisfied with the amount, Peck, "who was the only person to whom the government was bound, filed on November 7th, 1877, his petition in the Court of Claims against the United States, demanding \$55,000, damages for breach of contract." During the pendency of this suit,

Peck became a voluntary bankrupt, and Hobbs was appointed his assignee. Hobbs was thereupon substituted for Peck in the suit against the United States, and finally recovered judgment, upon which the money was paid over to him, Hobbs. MacLean and Harmon then brought suit in equity to enjoin Hobbs as assignee from distributing the proceeds of this judgment to the creditors generally, but claimed the fund, not because of any assignment from Peck, but because they as partners had paid out all the money and done all the work under the contract, and therefore claimed that the proceeds of this should go to them as assets of the partnership before going to the individual creditors of Peck. It is true that Peck had given written orders by which he agreed to pay to Harmon and McLean certain sums out of the moneys he might thereafter receive on account of his claim against the United States for contract of wood.

The Court, however, held that these gave Harmon and McLean no new right for they were already entitled to these amounts under their partnership articles, and that "Peck was therefore only promising to do what, on a good consideration, he had already by the articles of partnership, promised to do. There was no new consideration for these new promises." The Court further holds that Peck, at the time he entered into this partnership contract, had no claim against the government.

### THIRD.

*In Freedman's Savings & Trust Company v. Shepherd.*

*supra*, it appears that the Trust Company sold and conveyed certain real property to one Bradley, or Shepherd, for whom the former was really acting, and the latter gave back a purchase money mortgage, but before giving this mortgage he had leased the premises to the United States Government for postoffice purposes, reserving an annual rent. Thereafter Shepherd assigned the rentals from this postoffice lease to his creditor, William Thompson. The government failing to pay the rent, it was put in judgment and eventually drafts were issued by the government therefor. The Freedman's Savings & Trust Company contended that it was entitled to these drafts as being carried by the mortgage of the premises, rents, issues and profits thereof. Thompson contended that these were not carried by the mortgage, but by the assignment from Shepherd to himself. The greater part of the Court's consideration and discussion of the case is given to determining the rights under the mortgage to the Trust Company, resulting in the view that the Trust Company, as mortgagee, was not entitled to any accruing or accrued rents until it had taken possession of the premises on default, sale, and foreclosure of its mortgage, which did not involve the particular rents covered by the government's warrants. The Trust Company contended that the assignments of the rents to Thompson was in violation of Sections 3477 and 3777 R. S.

It is true that the Court holds, in discussing this feature of the case, that the assignment was not against the statute, but it is for the reason that the facts did not bring

the case within the statute, but at the same time they say "undoubtedly the lease made by Bradley to the United States created in his favor what in some sense was a 'claim upon the United States' for each year's rent as it fell due. And if the statute embraces a claim of such character, there could not have been any valid transfer or assignment of it in advance of its allowance, which could have been made the basis of a suit by the assignee against the United States, or which would compel the government to recognize the transfer or assignment. It is, perhaps, also true that, under some circumstances, the assignor, before the allowance of the claim and the issuing of the warrant, may disregard such an assignment altogether."

In this case the government, through its proper officers, has recognized the transfer of the property and the assignment of the lease and an assignment of the rent under it, and had paid the rent and had issued its warrants for the payment of rent in accordance with this assignment. But this discussion we take it, is wholly wide of the mark because the Court has already decided that the Trust Company had no rights itself to the rents under its mortgage and there was no one else contesting Thompson's rights.

In both of the cases of *Ball v. Halsell* (decided in 1896) and in the case of *Nutt v. Knut* (decided in 1906), the case of *Freedman's Savings & Trust Co. v. Shepherd* was cited to the Court in support of just such a contention as the appellants are making here, and in each instance the decision was adverse to their claim.



#### FOURTH.

In the case of *Bailey v. United States, supra*, Bailey sought to recover from the United States upon a claim which had been previously paid by the government under power of attorney executed by him and unrevoked at the time of the payment. In passing upon the question, the Court say :

"In the case before us no question arises as to the transfer or assignment of a claim against the government. The question is whether payment to one who has been authorized to receive it, by the power of attorney executed before the allowance of the claim by the act of Congress was good as between the government and the claimant, where, at the time of payment, such power of attorney was unrevoked. If, in respect of transfers or assignments of claims, the purpose of the statute, as ruled in *Goodman v. Niblack*, was to protect the government, not the claimant in his dealings with the government, it is difficult to perceive upon what ground it could be held that the statutory inhibition upon powers of attorney in advance of the allowance of the claim and the issuing of the warrant, can be used to compel a second payment after the amount thereof has been paid to the person authorized by the claimant to receive it. A mere power of attorney given before the warrant is issued—so long at least as it is unexecuted—may undoubtedly be treated by the claimant as absolutely null and void in any contest between him and his attorney in fact."

In this case the assignments of the claims of Gamwell & Wheeler against the United States were voluntarily made after the entry into the contracts and after the partial performance but before the allowance of any such claims or ascertainment of the amount due thereon, or the issu-

ing of any warrant for the payment thereof, and these assignments are therefor within the express language of the act and not within any of the exceptions noted. We believe that a review and analysis of the cases decided by this Court, wherein the construction of this statute was involved, definitely establishes the rule that voluntary assignments of claims of this character against the government, prior to their allowance, conveys no rights and creates no lien in favor of the assignee, but that under the rule laid down in the cases of *Goodman v. Niblack*, *Erwin v. United States* and *Price v. Forrest*, an involuntary assignment of these claims to the United States by operation of the bankrupt act vested the Trustee in Bankruptcy with the title of these claims for the benefit of all the creditors of Gamwell & Wheeler.

It is respectfully submitted that the decision of the Circuit Court of Appeals is in accordance with law and should be affirmed.

J. E. HORAN,  
H. D. COOLEY,  
W. A. PETERS,  
J. H. POWELL,  
HAROLD PRESTON,  
*Solicitors for Appellees.*

